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APPENDIX

Supreme Court of the United States

OCTOBER TERM, 1968

No. 71

PRESBYTERIAN CHURCH IN THE UNITED STATES, ET AL.,
Petitioners,

VS.

MARY ELIZABETH BLUE HULL MEMORIAL PRESBYTERIAN CHURCH, ET AL.,
Respondents.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF GEORGIA

Petition for Certiorari Filed April 30, 1968
Certiorari Granted June 10, 1968

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CHRONOLOGICAL LIST OF IMPORTANT DATES

1. May 26, 1966—Petition of Respondent Mary Elizabeth Blue Hull Memorial Presbyterian Church (hereinafter referred to as "Hull Memorial") filed in the Superior Court of Chatham County, Georgia.
2. May 27, 1966—Petition of Respondent Eastern Heights Presbyterian Church (hereinafter referred to as "Eastern Heights") filed in the Superior Court of Chatham County, Georgia.
3. June 23, 1966—Petitioners' Answer and Crossbill filed in said court in response to Hull Memorial's Petition.
4. June 23, 1966—Petitioners' Answer and Crossbill filed in said court in response to Eastern Heights' Petition.
5. July 8, 1966—Hull Memorial's Answer filed in said court in response to Petitioners' Answer and Crossbill.
6. July 8, 1966—Eastern Heights' Answer filed in said court in response to Petitioners' Answer and Crossbill.
7. November 7, 1966—Eastern Heights' Amendment filed in said court amending its Petition.
8. November 22, 1966—Hull Memorial's Amendments filed in said court amending its Petition.
9. November 28, 1966—Petitioners' Amendment filed in said court amending its Crossbill filed in response to Hull Memorial's Petition.
10. November 28, 1966—Petitioners' Amendment filed in said court amending its Crossbill filed in response to Eastern Heights' Petition.
11. December 6, 1966—Eastern Heights' Amendment filed in said court amending its Petition.
12. December 13, 1966—Hull Memorial's Amendment filed in said court amending its amended Petition.

13. December 12, 1966 through December 15, 1966—Trial of both cases in the Superior Court of Chatham County, Georgia, tried jointly by agreement of parties.

14. December 15, 1966—Verdict of the jury in favor of Respondents Hull Memorial and Eastern Heights.

15. December 22, 1966—Judgment of the Superior Court of Chatham County, Georgia, entered in favor of Hull Memorial.

16. December 22, 1966—Judgment of the Superior Court of Chatham County, Georgia, entered in favor of Eastern Heights.

17. December 29, 1966—Notice of Joint Appeal filed by Petitioners.

18. November 13, 1967—Oral arguments before the Supreme Court of Georgia by Petitioners and Respondents.

19. January 18, 1968—Opinion of the Supreme Court of Georgia affirming the judgments of the Superior Court of Chatham County, Georgia, in favor of Respondents.

20. January 18, 1968—Judgment of the Supreme Court of Georgia affirming the judgment of the Superior Court of Chatham County, Georgia, in favor of Hull Memorial.

21. January 18, 1968—Judgment of the Supreme Court of Georgia affirming the judgment of the Superior Court of Chatham County, Georgia, in favor of Eastern Heights.

22. January 29, 1968—Petitioners' Motion for Rehearing filed in the Supreme Court of Georgia.

23. February 12, 1968—Opinion of the Supreme Court of Georgia denying Petitioners' Motion for Rehearing.

24. February 12, 1968—Judgment of the Supreme Court of Georgia denying Petitioners' Motion for Rehearing.

25. April 30, 1968—Petition for Writ of Certiorari to the Supreme Court of Georgia filed by Petitioners in this Court.

26. June 10, 1968—Order of this Court granting Petitioners' Petition for Writ of Certiorari.

PLEADINGS

[55][1] STATE OF GEORGIA)
COUNTY OF CHATHAM)

TO THE SUPERIOR COURT OF SAID COUNTY

MARY ELIZABETH BLUE HULL MEMORIAL PRESBYTERIAN CHURCH
VS.
PRESBYTERIAN CHURCH IN THE UNITED STATES and J. LEHMON BRANTLEY, CHAIRMAN OF THE ADMINISTRATIVE COMMISSION OF THE PRESBYTERY OF SAVANNAH

The petition of MARY ELIZABETH BLUE HULL MEMORIAL PRESBYTERIAN CHURCH, as Plaintiff, respectfully shows to the Court the following:

1. That Plaintiff is a non-profit corporation duly organized under the laws of the State of Georgia, having its principal office in Savannah, Chatham County, Georgia.

2. That the defendants, PRESBYTERIAN CHURCH IN THE UNITED STATES and J. LEHMON BRANTLEY, CHAIRMAN, of the ADMINISTRATIVE COMMISSION OF THE PRESBYTERY OF SAVANNAH, are within the jurisdiction of this Honorable Court.

3. That Plaintiff corporation owns, has title and is in possession of that certain real property described as follows:

> All that certain lot, tract or parcel of land lying and being at the Northeastern corner of Bull and 37th Streets, in Savannah, Chatham County, Georgia, and distinguished upon the map or plan of said City as Lots Numbered Fifty-three (53) and Fifty-four (54) of

1. Numbers in brackets refer to pages of certified transcript of record filed with this Court.

Thomas Ward. Said lots lying and being contiguous and comprising the Northeastern corner of said Bull and 37th Streets, together with all and singular the buildings, improvements, church edifices, and Sanctuary at which location Divine services of Worship are held.

[56] 4. Not withstanding the fact that the Plaintiff is the owner of and in peaceful possession of the property described in Paragraph 3 hereof, the Defendants have officially notified Plaintiff that it is their intention to trespass upon said property, to deny the Plaintiff the right to hold religious services in its own property and to provide services of worship in said property itself, and to exclude petitioner and its duly constituted Pastor and Elders and officers of Plaintiff corporation from the use of its own property. This action if carried out as threatened constitutes a trespass and eviction of the owners and possessors of said property. It is necessary for Defendants to be enjoined from trespassing and evicting petitioner in order to avoid a circuity and multiplicity of actions, all of the aforesaid threats to trespass upon and to oust petitioner from said premises being continuous in their nature.

5. Plaintiff will be irreparably damaged, harmed, and injured and the peace and dignity of their right to religious worship will be impaired.

WHEREFORE YOUR PLAINTIFF PRAYS as follows, to-wit:

A. That process issue requiring the Defendants to be and appear in said Court to answer this complaint.

B. That, until further order of Court, the Defendants be restrained and temporarily enjoined from committing the aforesaid acts of trespass and eviction.

[57] C. That a day certain be fixed upon which the Defendants are required to show cause, if any they have, why they should not be temporarily enjoined from committing the acts of trespass and eviction hereinabove alleged.

D. That a copy of this petition and order issued thereon be served on the Defendants in person or their agents.

E. That the plaintiff have such other and further relief as to the Court may seem reasonable and just.

F. That upon the final hearing of the case, the Defendants be permanently enjoined from committing the acts of damage and trespass hereinabove complained of.

/s/ Richard T. Cowan,
Attorney for Plaintiff.

[Verification, Order of court and Summons omitted in printing.]

[7] STATE OF GEORGIA)
COUNTY OF CHATHAM)

TO THE SUPERIOR COURT OF SAID COUNTY

EASTERN HEIGHTS PRESBYTERIAN CHURCH

VS

PRESBYTERIAN CHURCH IN THE UNITED STATES and J. LEHMON BRANTLEY, CHAIRMAN OF THE ADMINISTRATIVE COMMISSION OF THE PRESBYTERY OF SAVANNAH

The petition of EASTERN HEIGHTS PRESBYTERIAN CHURCH, hereinafter referred to as plaintiff, respectfully shows:

1. The plaintiff is a non-profit religious institution incorporated and organized under the laws of the State of Georgia, with its principal office at 1307 East 37th Street, Savannah, Chatham County, Georgia.

2. The defendants, Presbyterian Church in the United States and J. Lehmon Brantley, are subject to the jurisdiction of this Court. The defendant, J. Lehmon Brantley, as Chairman of the Administrative Commission of the Presbytery of Savannah, is an authorized officer and agent of the Presbytery of Savannah and the Presbyterian Church in the United States. Said defendant was so designated and commissioned at the meeting of the Presbytery of Savannah on April 19, 1966 in Brunswick, Georgia.

3. The plaintiff is vested with title and ownership, and is now enjoying the quiet and peaceful possession of the hereinafter described property:

> All those certain lots, tracts or parcels of land situate, lying and being in the City of Savannah, Chatham County, State of Georgia, designated upon a plan of subdivision known as Myers Park Place, now Oliver Ward, as Lots Numbers One (1), Two (2), Three (3),

Four (4), Five (5), [8] Six (6), and Seven (7), in Block Seventeen (17), of the said Myers Park Place, together with all the improvements on said lots. The said seven lots hereby conveyed are bounded as a whole as follows: On the North by 37th Street, on the East by property now or formerly owned by Kehoe, on the South by a lane, and on the West by Cedar Street. Each of said lots hereby conveyed has a width of 30 feet and a depth of 30 feet, and the said seven lots are a part of the property conveyed to George H. Richter and Elry Stone by the Myers Park Place Corporation by deed bearing date the 29th day of November, 1923, recorded in the Clerk's office, Superior Court, Chatham County, Georgia, in Book 18 V's, folio 163, and are the same lots conveyed by said George H. Richter and Elry Stone to said The Trustees of the Independent Presbyterian Church of Savannah by deed dated May 9, 1924, and recorded in said Clerk's office in Book 19 G's, page 206.

All those certain lots, tracts or parcels of land situate lying and being in the City of Savannah, Chatham County, Georgia, and being known and designated on the map of said City as Lots Eight (8) and Nine (9), Block Seventeen (17) Oliver Ward. Said lots lying contiguous and having a combined frontage of Sixty (60) feet on the North side of Seiler Avenue with a rectangular depth Northwardly of Eighty (80) feet to a lane and being bounded on the whole as follows: On the North by a lane, on the East by Lot Thirty Six (36), said block and Ward, on the South by Seiler Avenue and on the West by Lot Ten (10), said block and Ward.

4. The defendants by the action of said Administrative Commission of the Presbytery of Savannah, dated May 19, 1966, as shown upon Exhibit "A", hereto attached and made a part hereof, threaten to trespass upon the plaintiff's property by assuming original jurisdiction over said property, denying the church session of the plaintiff the right to exercise authority over the administration of

church affairs and imposing other ministerial leadership upon the plaintiff for the purposes of holding regular services of worship and does threaten other action in accordance with the constitution of the Presbyterian Church in the United States. Such action in assuming original jurisdiction over the plaintiff's property would constitute an act of trespass. The removal of plaintiff's regular pastor, Mr. Todd W. Allen and the imposition of another minister of the defendant's choosing would disrupt the good order and peace of the plaintiff's worship service and the administration of its affairs. The actions [9] provided for in Exhibit "A" constitute continuing, threatened acts of trespass on the property hereinbefore described, which would destroy the plaintiff's quiet and peaceful possession that it now enjoys and have a demoralizing effect upon the orderly administration of the church. The defendants must be enjoined to avoid a circuity and multiplicity of suits. Said threats of trespass and invasion are continuous in their nature.

5. The plaintiff will be irreparably damaged, injured and hurt unless the threatened acts of trespass and invasion are enjoined. Further, the peaceful utility and enjoyment of said property for religious worship and church services will be adversely affected, and the dignity and sanctity of the church edifice intruded upon.

WHEREFORE PLAINTIFF PRAYS as follows, to-wit:

A. That process issue requiring the defendants to be and appear in said court to answer this complaint;

B. That, until further order of court, the defendants be restrained and temporarily enjoined from committing the aforesaid acts of trespass;

Steve Miller who refused to comment to the Commission, affirmed that he voted in favor of the above mentioned resolution from his church, that the resolution definitely expressed his wishes, and that he was unwilling to reconsider his action or to confer with the full Administrative Commission, but stated again that his action was final, and

WHEREAS, Each of the active Ruling Elders serving on the Session of the Eastern Heights Presbyterian Church, by name O. M. Alcorn, Jr., S. D. Gladen, R. A. Warren, Frank L. Perry, Armin S. Hubert, W. Dalton Smith, James G. Luce, Albert Freundt, and J. J. Parrish, was visited Personally or communicated with by telephone by members of this Administrative Commission, with the one exception of Mr. B. C. Kirkpatrick who was not contacted, and each one of them affirmed that he had voted in favor of the above mentioned resolution from his church, that the resolution definitely expressed his wishes, and that he was unwilling to reconsider his action or to confer with the full Administrative Commission, but stated again that his action was final,

THEREFORE, Each active Ruling Elder, by name M. R. Baker, R. W. Cowan, C. P. Ford, L. R. Herman, Steve Miller, W. S. Stegin, and G. C. Smith, serving on the session of the Mary Elizabeth Blue Hull Memorial Presbyterian Church, with the one exception of Mr. R. M. Rehm, having renounced his office in and communion with the Presbyterian Church in the United States; and each active Ruling Elder, by name O. M. Alcorn, Jr., S. D. Gladen, R. A. Warren, Frank L. Perry, Armin S. Hubert, W. Dalton Smith, James G. Luce, Albert Freundt, and J. J. Parrish, serving on the Session of the Eastern Heights Presbyterian Church, with the one exception of Mr. B. C. Kirkpatrick who was not contacted, having renounced his office in and

communion with and the jurisdiction of the Presbyterian Church in the United States,

This Administrative Commission, in the name of and by the authority and power vested in it by the Presbytery of Savannah of the Presbyterian Church in the United States, does hereby record the irregularity of the actions of these Ruling Elders, by name M. R. Baker, R. W. Cowan, C. P. Ford, L. R. Herman, Steve Miller, W. S. Stegin, and G. C. Smith of the Mary Elizabeth Blue Hull Memorial Presbyterian Church, and O. M. Alcorn, Jr., S. D. Gladen, R. A. Warren, Frank L. Perry, Armin S. Hubert, W. Dalton Smith, James G. Luce, Albert Freundt, and J. J. Parrish of the Eastern Heights Presbyterian Church, in renouncing their office in and communion with and the jurisdiction of the Presbyterian Church in the United States, and does hereby with sincere reluctance and grief of spirit declare that they have removed themselves from office and membership in the Presbyterian Church in the United States, and does hereby withdraw from each of them; by name [13] M. R. Baker, R. W. Cowan, C. P. Ford, L. R. Herman, Steve Miller, W. S. Stegin, G. C. Smith, O. M. Alcorn, Jr., S. D. Gladen, R. A. Warren, Frank L. Perry, Armin S. Hubert, W. Dalton Smith, James G. Luce, Albert Freundt, J. J. Parrish, all authority to exercise office derived from the Presbyterian Church in the United States, as expressly required in the Constitution of the Presbyterian Church in the United States, *Book of Church Order,* section 111-3, and further

Since there is only one Ruling Elder in the Eastern Heights Presbyterian Church, namely Mr. B. C. Kirkpatrick, and there is only one Ruling Elder in the Mary Elizabeth Blue Hull Memorial Presbyterian Church, namely Mr. R. M. Rehm, and since according to the provisions of the

Constitution of the Presbyterian Church in the United States, *Book of Church Order*, section 15-2, one Ruling Elder does not constitute a Session, and further

Since there is no Session and no one who can exercise jurisdiction in either the Mary Elizabeth Blue Hull Memorial Presbyterian Church or the Eastern Heights Presbyterian Church,

THEREFORE, This Administrative Commission, in the name of and by the authority and power of the Presbytery of Savannah of the Presbyterian Church in the United States, assumes original jurisdiction over these two aforementioned churches in accordance with the Constitution of the Presbyterian Church in the United States, *Book of Church Order*, section 16-7(2), which states that the Presbytery has the power to assume original jurisdiction in cases in which the Church Session cannot exercise its authority, and further

BE IT KNOWN THAT this Administrative Commission will secure Ministerial leadership and provide regular services of worship in the sanctuaries of the Mary Elizabeth Blue Hull Memorial Presbyterian Church and the Eastern Heights Presbyterian Church for those members who wish to continue their membership in and communion with the Presbyterian Church in the United States, and will take such further action as shall be necessary in accordance with the Constitution of the Presbyterian Church in the United States.

ALL OF THE ABOVE ACTION, after careful and prayerful consideration, was unanimously adopted by the Administrative Commission on May 19, 1966 at its meeting in Savannah, Georgia, and in accordance with the *Book of Church Order*, sections 118-2 and 118-3, copies of this action

are to be forwarded to Clifford H. Brewton, Todd W. Allen, M. R. Baker, R. W. Cowan, C. P. Ford, L. R. Herman, Steve Miller, R. M. Rehm, W. S. Stegin, G. C. Smith, O. M. Alcorn, Jr., S. D. Gladen, R. A. Warren, Frank L. Perry, Armin S. Hubert, W. Dalton Smith, James G. Luce, Albert Freundt, J. J. Parrish, and B. C. Kirkpatrick; and notice is hereby given that this action will be filed with the Stated Clerk of the Presbytery of Savannah on May 24, 1966, and further that copies of this action are to be forwarded to the Stated Clerk of the General Assembly of the Presbyterian Church in the United States and the Executive Secretary of the Board of Annuities and Relief of the Presbyterian Church in the United States.

[14] /s/ J. Lehmon Brantley

Chairman, the Administrative Commission

/s/ Frank Alfred Mathes
/s/ Chalmers F. McCutchen
/s/ William A. Crosland, Jr.
/s/ J. E. Lambright
/s/ William C. Cox

[Affidavit, Order of court and Summons omitted in printing.]

[62] STATE OF GEORGIA :
COUNTY OF CHATHAM :

IN THE SUPERIOR COURT OF SAID COUNTY

MARY ELIZABETH BLUE HULL MEMORIAL PRESBYTERIAN CHURCH
VS.
PRESBYTERIAN CHURCH IN THE UNITED STATES AND J. LEHMON BRANTLEY, CHAIRMAN OF THE ADMINISTRATIVE COMMISSION OF THE PRESBYTERY OF SAVANNAH

Case Number 5003

Answer and Crossbill

NOW COME Defendants in the above styled action and for answer respectfully show the following:

1. Defendants neither admit nor deny Paragraph One (1) of Plaintiff's Petition for want of sufficient information.

2. Defendants admit Paragraph Two (2) of Plaintiff's Petition.

3. Defendants admit that part of Paragraph Three (3) of Plaintiff's Petition which states that Plaintiff Corporation is holding title to the subject property but deny that any of its officers or persons now holding possession have a right of possession.

4. Defendants deny Paragraph Four (4) of Plaintiff's Petition.

5. Defendants deny Paragraph Five (5) of Plaintiff's Petition.

FOR FURTHER PLEA, ANSWER AND CROSSBILL DEFENDANTS SHOW:

6. That certain members of the congregation of Plaintiff Corporation including all active Ruling Elders except for one, on April 17, 1966, by Resolution, declared themselves to be free from all "ecclesiastical control, jurisdiction and oversight of the Presbyterian Church in the United States" and attempted to establish themselves as an independent Presbyterian Church, a copy of said Resolution being attached hereto, marked Exhibit "A", and made a part hereof.

[63] 6(a). That prior to said action of April 17, 1966, the aforesaid members of said congregation and active Ruling Elders who voted in the affirmative on said Resolution as well as the Plaintiff Corporation were by their former actions and active practice, members of the Presbyterian Church in the United States, (hereinafter called the Southern Presbyterian Church) and by virtue of such membership and association, were individually and collectively subject to the constitution and laws of said Southern Presbyterian Church, said Church being representative in form and not congregational.

7. That a copy of the aforesaid Resolution of April 17, 1966 was received by the Presbytery of Savannah of the Southern Presbyterian Church as well as a letter dated the same date from the pastor of said church, Clifford H. Brewton, who therein renounced the "authority or jurisdiction of the Savannah Presbytery, the Synod of Georgia, and the Presbyterian Church in the United States".

8. Thereafter the Presbytery of Savannah of the Southern Presbyterian Church established an Administrative Commission under the laws of said Church with full authority to act in the premises and with special instruc-

tions to visit the said Ruling Elders of said Plaintiff Corporation in an attempt to correct the differences that had arisen.

9. Said Administrative Commission was further instructed to visit Mr. Clifford H. Brewton with a view towards discussing with him the said difficulties. Members of said Commission did visit the said Clifford H. Brewton at which time he affirmed his renunciation letter of April 17, 1966, and declined to reconsider his action or to confer with said Administrative Commission but stated that his action was final.

[64] 10. Members of said Administrative Commission visited each of the Ruling Elders of Plaintiff Corporation with the exception of Steve Miller who refused to comment for the Commission. Each Ruling Elder visited, except for one, affirmed that he voted in favor of the above mentioned Resolution, that the same definitely expressed his wishes and that he was unwilling to reconsider his action or to confer with the full Administrative Commission but stated that his action was final.

11. The Administrative Commission, because said Ruling Elders confirmed their previous decisions to withdraw from the Southern Presbyterian Church and refused to discuss the matter further with the full Administrative Commission, were left with no alternative except to acknowledge that said persons had removed themselves from office and membership in the Southern Presbyterian Church, whereupon the said Administrative Commission withdrew from each of them all authority to exercise office derived from the Southern Presbyterian Church as set out in the Book of Church Order of said Church, said action by the Administrative Commission being attached hereto, marked Exhibit "B", and made a part hereof.

12. The Administrative Commission determined that since only one Ruling Elder of Plaintiff Corporation was in good standing with the Southern Presbyterian Church, that it was necessary under the laws of said Southern Presbyterian Church for the Presbytery of Savannah to assume original jurisdiction over the aforesaid property claimed by Plaintiff which action was taken and is a part of the aforesaid Exhibit "B".

13. That the decision of the Administrative Commission which was with full authority of the Savannah Presbytery, was not appealed under the rules of Church Order of the Southern Presbyterian Church and the same therefore has become final and binding on the parties and this Court.

[65] 14. Defendants have a right of possession of the subject property under the laws and constitution of the Southern Presbyterian Church, the State of Georgia, and the United States of America.

15. Since said date of April 17, 1966, the aforesaid Plaintiff and members of the congregation and said Ruling Elders who voted in the affirmative on said Resolution have appropriated the property which is the subject of this legal action to their use as a church separate and independent from the Southern Presbyterian Church, said action being in violation of the laws of Georgia, the United States of America, and the Southern Presbyterian Church.

16. The aforesaid appropriation by the parties and Plaintiff corporation constitutes a continuing trespass in denying Defendants access to said property. That it is necessary that Plaintiff and all others individually who are associated with said trespass be enjoined from further trespass or defendants will be irreparably damaged, harmed, and injured, and the peace and dignity of their

right of possession of said property for religious worship for those loyal to the Southern Presbyterian Church will be impaired.

WHEREFORE DEFENDANTS PRAY:

(a) That Plaintiff's Petition be denied.

(b) That the Court add such parties as may be necessary to carry out its orders herein

(c) That Plaintiffs and all additional parties Plaintiff who may be added be permanently enjoined from appropriating to their use the property which is the subject of this action or in any way exercising dominion over the same and that Defendant, Savannah Presbytery, be declared to have a right of possession of said property under the Rules of Church Order of the Presbyterian Church in the United States.

/s/ Frank S. Cheatham, Jr.
Attorney for Defendant

Exhibit "A"

[66] WHEREAS, the Congregation of the Mary Elizabeth Blue Hull Memorial Presbyterian Church affirms and believes the Scriptures of the Old and New Testaments to be the Word of God, the only infallible rule of faith and practice, and the Westminster Confession of Faith and the Larger and Shorter Catechisms, as originally adopted by the Presbyterian Church in the United States in 1861 to be the system of doctrine taught in the Holy Scriptures, and

WHEREAS, the Presbyterian Church in the United States has violated its constitution as originally adopted in 1861 and departed from the faith and practice as held by said Church at the time the Mary Elizabeth Blue Hull

Memorial Presbyterian Church became affiliated. Some of these violations and departures being:

1) The ordaining of women as preachers and ruling elders contrary to the teaching of Scripture in I Timothy 2:11-15, Titus 2:3-5, and I Corinthians 14:34;

2) Making pronouncements and recommendations which concern civil, economic, social and political matters, which is contrary to the Confession of Faith, Chapter 33-4.

3) Giving support to the removal of Bible reading and prayers by children in the public schools;

4) Making declarations which would have the effect of assuming ownership of local church property contrary to civil law, thereby assuming illegal authority in civil affairs, and

WHEREAS, the Board of Christian Education of the Presbyterian Church in the United States has adopted the Foundation Papers for the Covenant Life Curriculum which tend to supersede the Confession of Faith, particularly Chapter 1, and introduces and teaches Neo-orthodoxy, which is alien to the Confession of Faith and the Catechisms as originally adopted by the Presbyterian Church in the United States in 1861, and

WHEREAS, the Presbyterian Church in the United States through its General Assembly has caused all members of the Church to remain in the National Council of the Churches of Christ in the United States of America, and willingly accepts the leadership of said council which advocates such things as civil disobedience, the subverting of parental authority, and intermeddling in civil affairs.

NOW THEREFORE BE IT RESOLVED THAT:

The Congregation of the Mary Elizabeth Blue Hull Memorial Presbyterian Church declares itself to be an independent Presbyterian Church, and does herewith sever all connections with and remove itself from all ecclesiastical control, jurisdiction and oversight of the Presbyterian Church in the United States including the National Council of the Churches of Christ in the United States of America and the World Council of Churches, in order that we may reaffirm and maintain our adherence to the Westminster Confession of Faith and the Larger and Shorter Catechisms as originally adopted by the Presbyterian Church in the United States in 1861 as containing the system of doctrine taught in the Holy Scriptures, and declare our obedience to the Word of God.

APPROVED BY CONGREGATION, APRIL 17, 1966.

M. R. Baker
R. W. Cowan
C. P. Ford, Clerk
L. R. Herman
Steve Miller
R. M. Rehm
W. S. Stegin
G. C. Smith
C. H. Brewton, Moderator

/s/ Carroll P. Ford,
Clerk of Congregational meeting

/s/ Clifford H. Brewton,
Moderator of Congregational meeting

WITNESS

/s/ Lester R. Herman

[Verification omitted in printing.]

[19] STATE OF GEORGIA :
COUNTY OF CHATHAM :

TO THE SUPERIOR COURT OF CHATHAM COUNTY

EASTERN HEIGHTS PRESBYTERIAN CHURCH

VS.

PRESBYTERIAN CHURCH IN THE UNITED STATES AND J. LEHMON BRANTLEY, CHAIRMAN OF THE ADMINISTRATIVE COMMISSION OF THE PRESBYTERY OF SAVANNAH

Case Number 5005

Answer and Crossbill

NOW COME Defendants in the above styled action and for Answer respectfully show the following:

1. Defendants neither admit nor deny Paragraph One (1) of Plaintiff's Petition for want of sufficient information.

2. Defendants admit Paragraph Two (2) of Plaintiff's Petition.

3. Defendants admit that Plaintiff and others are now in possession of the property described in Paragraph Three (3) of Plaintiff's Petition, but for want of sufficient information can neither admit nor deny the remaining allegations in said paragraph.

4. Defendants admit the accuracy of Exhibit "A" of Paragraph Four (4) of Plaintiff's Petition but deny the remaining allegations in said paragraph.

5. Defendants deny the allegations in Paragraph Five (5) of Plaintiff's Petition.

FOR FURTHER PLEA, ANSWER AND CROSSBILL DEFENDANTS SHOW:

6. That certain members of the congregation of plaintiff Corporation including all active Ruling Elders, on April 17, 1966, by Resolution declared themselves "to be an autonomous Presbyterian church under the active Lordship of Christ Jesus and does herewith sever all connections with and remove itself from all ecclesiastical control, jurisdiction and oversight of the Presbyterian Church in the United States of America . . .", a copy of said Resolution being [20] attached hereto, marked Exhibit "A", and made a part hereof.

7. That prior to said action of April 17, 1966, the aforesaid members of said congregation and active Ruling Elders who voted in the affirmative on said Resolution as well as Plaintiff Corporation, were by their former actions and active practice, members of the Presbyterian Church in the United States, (hereinafter called the Southern Presbyterian Church), and by virtue of such membership and association, were individually and collectively subject to the constitution and laws of said Southern Presbyterian Church, said Church being representative in form and not congregational.

8. That a copy of the aforesaid Resolution of April 17, 1966, was received by the Presbytery of Savannah of the Southern Presbyterian Church as well as a letter dated April 18, 1966, from the pastor of said church, Todd W. Allen, which stated in part as follows: "This is to officially notify the Savannah Presbytery that as of this date, April 18, 1966, I am no longer under the authority or jurisdiction of the Savannah Presbytery, the Synod of Georgia, and the Presbyterian Church in the United States".

9. Thereafter the Presbytery of Savannah of the Southern Presbyterian Church established an Administra-

tive Commission under the laws of said Church with full authority to act in the premises and with special instructions to visit the said Ruling Elders of said Plaintiff Corporation in an attempt to correct the differences that had arisen.

10. Said Administrative Commission was further instructed to visit Mr. Todd W. Allen with a view towards discussing with him the said difficulties. Members of the Commission did visit the said Todd W. Allen at which time he affirmed his renunciation letter of April 18, 1966, and declined to reconsider his action or to confer with said Administrative Commission but stated that his action was final.

[21] 11. Members of said Administrative Commission visited or communicated with or received communications from each of the Ruling Elders of Plaintiff Corporation. Each Ruling Elder affirmed that he voted in favor of the above mentioned Resolution, that the same definitely expressed his wishes and that he was unwilling to reconsider his action or to confer with the full Administrative Commission but stated that his action was final.

12. The Administrative Commission, because said Ruling Elders confirmed their previous decisions to withdraw from the Southern Presbyterian Church and refused to discuss the matter further with the full Administrative Commission, were left with no alternative except to acknowledge that said persons had removed themselves from office and membership in the Southern Presbyterian Church, whereupon the said Administrative Commission withdrew from each of them all authority to exercise office derived from the Southern Presbyterian Church as set out in the Book of Church Order of said Church, said action by the Administrative Commission being attached hereto, marked Exhibit "B", and made a part hereof.

13. The Administrative Commission determined that since no Ruling Elder of Plaintiff Corporation was in good standing with the Southern Presbyterian Church, that it was necessary under the laws of said Southern Presbyterian Church for the Presbytery of Savannah to assume original jurisdiction over the aforesaid property claimed by Plaintiff which action was taken and is a part of the aforesaid Exhibit "B".

14. That the decision of the Administrative Commission which was with full authority of the Savannah Presbytery, was not appealed under the rules of Church Order of the Southern Presbyterian Church and the same therefore has become final and binding on the parties and this Court.

[22] 15. Defendants have a right of possession of the subject property under the laws and constitution of the Southern Presbyterian Church, the State of Georgia, and the United States of America.

16. Since said date of April 17, 1966, the aforesaid Plaintiff and members of the congregation and said Ruling Elders who voted in the affirmative on said Resolution, have appropriated the property which is the subject of this legal action to their use as a Church separate and independent from the Southern Presbyterian Church, said action being in violation of the laws of Georgia, the United States of America, and the Southern Presbyterian Church.

17. The aforesaid appropriation by the parties and Plaintiff Corporation constitutes a continuing trespass in denying Defendants access to said property. That it is necessary that Plaintiff and all others individually who are associated with said trespass be enjoined from further trespass or Defendants will be irreparably damaged, harmed, and injured, and the peace and dignity of their

right of possession of said property for religious worship for those loyal to the Southern Presbyterian Church will be impaired.

WHEREFORE DEFENDANTS PRAY:

(a) That Plaintiff's Petition be denied.

(b) That the Court add such parties as may be necessary to carry out its orders herein

(c) That Plaintiffs and all additional parties Plaintiff who may be added be permanently enjoined from appropriating to their use the property which is the subject of this action or in any way exercising dominion over the same and that Defendant Savannah Presbyterian, be declared to have a right of possession of said property under the Rules of Church Order of the Presbyterian Church in the United States.

/s/ Frank S. Cheatham, Jr.
Attorney for Defendants

Exhibit "A"

[23] A TRUE COPY

A Resolution

RECOMMENDED BY THE SESSION & PASTOR FOR ADOPTION BY THE CONGREGATION OF THE EASTERN HEIGHTS PRESBYTERIAN CHURCH

Whereas, the Congregation of the Eastern Heights Presbyterian Church of Savannah, Georgia affirms and believes the Scriptures of the Old and New Testaments to be the Word of God, the only infallible rule of faith and practice, and the Westminister Confession of Faith and the Larger and Shorter Catechisms, as originally adopted by the Presbyterian Church in the United States in 1861, to be the system of doctrine taught in the Holy Scriptures, and

Whereas, in our judgment and interpretation of the Scriptures and the Westminister Confession of Faith, the Presbyterian Church in the United States has violated its constitution and departed from the faith and practice as held by said Church at the time Eastern Heights Presbyterian Church became affiliated, some of these violations and departures being:

1. The ordaining of women as preachers and ruling elders contrary to the teaching of the Scriptures in I Timothy 2:11-3:5; Titus 1:6; 2:3-5; I Corinthians 14:34-35.

2. Making pronouncements and recommendations which concern civil, economic, social and political matters, which is contrary to the Confession of Faith, Chapter 33:4.

3. Giving support to the removal of Bible reading and prayers by children in the public schools, and

Whereas, through the Board of Christian Education of the Presbyterian Church in the United States, Foundation Papers have been adopted for the Covenant Life Curriculum which tend to supercede the Confession of Faith, particularly Chapter I, and introduces and teaches Neo-orthodoxy, which is alien to the Confession of Faith and the Catechisms as originally adopted in 1861 by the Presbyterian Church in the United States, and

Whereas, the Presbyterian Church in the United States through its General Assembly has caused all members of the Church to remain in the National Council of the Churches of Christ in the United States of America, and willingly accepts the leadership of said council which advocates such things as the subverting of parental authority, civil disobedience, and intermeddling in civil affairs, now therefore, be it

Resolved, That the Congregation of the Eastern Heights Presbyterian Church declares itself to be an autonomous Presbyterian Church under the active Lordship of Christ Jesus and does herewith sever all connections with and remove itself from all ecclesiastical control, jurisdiction and oversight of the Presbyterian Church in the United States of America and the World Council of Churches in order that we may reaffirm and maintain our adherence to the Westminister Confession of Faith and the Larger and Shorter Catechisms as originally adopted by the Presbyterian Church in the United States as containing the system of doctrine taught in the Holy Scriptures, and declare our obedience to the Word of God.

ADOPTED AT A CONGREGATIONAL MEETING HELD ON April 17, 1966

CLERK (Signature illegible)

MODERATOR (Signature illegible)

Portion of Exhibit "B"

[29] ACTION OF THE ADMINISTRATIVE COMMISSION APPOINTED BY THE PRESBYTERY OF SAVANNAH OF THE PRESBYTERIAN CHURCH IN THE UNITED STATES TO RESOLVE THE DIFFICULTIES IN THE HULL MEMORIAL PRESBYTERIAN CHURCH AND THE EASTERN HEIGHTS PRESBYTERIAN CHURCH.

WHEREAS, A Resolution dated April 17, 1966 was received by the Presbytery of Savannah from the Eastern Heights Presbyterian Church of Savannah, Georgia stating in part that the said Eastern Heights Presbyterian Church severed all ecclesiastical relations with the Presbytery of Savannah and the Presbyterian Church in the United States, and

WHEREAS, Mr. B. C. Kirkpatrick, a Ruling Elder serving on the Session of the said Eastern Heights Presbyterian Church did affirm, by a letter addressed to the Chairman of this Administrative Commission dated May 24, 1966, that he was in full accord with the above mentioned Resolution, and

WHEREAS, By this action the said B. C. Kirkpatrick did renounce his office in and communion with the Presbyterian Church in the United States, now

THEREFORE, This Administrative Commission, in the name of and by the authority and power vested in it by the Presbytery of Savannah and the Constitution of the Presbyterian Church in the United States, *Book of Church Order*, section 111-3, does hereby record the irregularity of the actions of the said B. C. Kirkpatrick in renouncing his office in and communion with the Presbyterian Church in the United States, and does hereby declare that he has re-

moved himself from office and membership in the Presbyterian Church in the United States, and does hereby withdraw from him all authority to exercise office derived from the Presbyterian Church in the United States.

THE ABOVE ACTION was unanimously adopted by the Administrative Commission on June 2, 1966 at its meeting in Savannah, Georgia. In accordance with the *Book of Church Order*, sections 118-2 and 118-3, copies of this action will be forwarded to the said B. C. Kirkpatrick, and the Action [30] will be filed with the Stated Clerk of the Presbytery of Savannah on June 8, 1966.

/s/ J. Lehmon Brantley
Chairman, the Administrative Commission

/s/ Chalmers F. McCutchen
/s/ Frank Alfred Mathes
/s/ William A. Crosland, Jr.
/s/ J. E. Lambright
/s/ William C. Cox

[Verification omitted in printing.]

[73] STATE OF GEORGIA)
COUNTY OF CHATHAM)

IN THE SUPERIOR COURT OF SAID COUNTY

MARY ELIZABETH BLUE HULL MEMORIAL PRESBYTERIAN CHURCH
VS
PRESBYTERIAN CHURCH IN THE UNITED STATES AND J. LEHMON BRANTLEY, CHAIRMAN OF THE ADMINISTRATIVE COMMISSION OF THE PRESBYTERY OF SAVANNAH

Case Number 5003

Answer to Defendant's Answer and Crossbill

NOW COMES the plaintiff in the above styled action and in answer to the defendant's answer and cross bill shows the following:

1. Plaintiff admits paragraph six of defendant's answer and cross bill.

2. For want of sufficient information the plaintiff neither admits nor denies so much of paragraph six a (6a) which refers to the Elders and congregation having by their actions and practices subjected themselves individually and collectively to the constitution and laws of the Presbyterian Church in the United States (Southern Presbyterian Church).

(a) So much of said paragraph which refers to the church being representative and not congregational is admitted for spiritual affairs only, but is emphatically denied as vesting said church (Presbyterian Church in the United States) with any right, title or interest in and to the plaintiff's property.

3. Plaintiff admits paragraphs seven, eight, nine and ten of the defendant's answer and cross bill.

4. For want of sufficient information the plaintiff neither admits or denies paragraphs eleven and twelve of defendant's answer and cross bill.

[74] 5. Plaintiff denies paragraphs thirteen, fourteen, fifteen and sixteen of defendant's answer and cross bill.

WHEREFORE PLAINTIFF PRAYS:

A. That defendant's answer and cross bill be denied.

B. That title and right to possession of the property described in plaintiff's petition be declared to be in the plaintiff under the law of the State of Georgia.

/s/ Richard T. Cowan
Attorney for Plaintiff.

[Certificate of Service omitted in printing.]

[32] STATE OF GEORGIA)
COUNTY OF CHATHAM)

TO THE SUPERIOR COURT OF CHATHAM COUNTY

EASTERN HEIGHTS PRESBYTERIAN CHURCH

VS.

PRESBYTERIAN CHURCH IN THE UNITED STATES AND J. LEHMON BRANTLEY, CHAIRMAN OF THE ADMINISTRATIVE COMMISSION OF THE PRESBYTERY OF SAVANNAH

Case Number 5005

Answer to Defendants Answer and Crossbill

NOW COMES the Plaintiff in the above styled action and in answer to the Defendants Answer and Crossbill shows the following:

1. Plaintiff admits Paragraph Six (6) of Defendants Answer and Crossbill.

2. For the want of sufficient information the Plaintiff neither admits nor denies so much of Paragraph Seven (7) which refers to the Elders and congregation having by their actions and practices subjected themselves individually and collectively to the constitution and laws of the Presbyterian Church in the United States (Southern Presbyterian Church).

So much of said paragraph which refers to the church being representative and not congregational is admitted for spiritual affairs only, but is emphatically denied as vesting said church (Presbyterian Church in the United States) with any right, title or interest in and to the plaintiff's property.

The Plaintiff denies the rest of said paragraph as the same applies to it.

[33] 3. Plaintiff admits Paragraph Eight (8) of Defendants Answer and Crossbill.

4. For want of sufficient information the Plaintiff neither admits nor denies Paragraphs Nine (9), Ten (10), and Eleven (11) of the Defendants Answer and Crossbill.

5. Plaintiff admits the existence of Exhibit "B" of Paragraph Twelve (12) of the Defendants Answer and Crossbill but for want of sufficient information Plaintiff neither admits nor denies the remaining allegations contained therein.

6. Paragraph Thirteen (13) of Defendants Answer and Crossbill is denied.

7. So much of Paragraph Fourteen (14) of Defendants Answer and Crossbill which refers to the decision of the Savannah Presbytery and the matter of the appeal of same as it applies to those affected by said decision are admitted.

That part of said paragraph which refers to the decision as being final upon the plaintiff and this court is emphatically denied.

8. Paragraph Fifteen (15), Sixteen (16) and Seventeen (17) of the Defendants Answer and Crossbill are denied.

WHEREFORE PLAINTIFF PRAYS:

(a) Defendants Answer and Crossbill be denied.

(b) That title and right to possession of the property described in the Plaintiff's Petition be declared to be in the Plaintiff under the law of the State of Georgia.

/s/ Owen H. Page
Attorney for Plaintiff

[Verification and Certificate of Service omitted in printing.]

[36] STATE OF GEORGIA)
COUNTY OF CHATHAM)

TO THE SUPERIOR COURT OF SAID COUNTY

EASTERN HEIGHTS PRESBYTERIAN CHURCH

VS.

PRESBYTERIAN CHURCH IN THE UNITED STATES AND J. LEHMON BRANTLEY, CHAIRMAN OF THE ADMINISTRATIVE COMMISSION OF THE PRESBYTERY OF SAVANNAH

Case Number 5005

Amendment

NOW COMES THE PLAINTIFF in the above styled action and with leave of the court first had and obtained, files this its amendment to its petition:

By adding at the end of paragraph one (1) of said petition: "On April 17, 1966, at a properly called and convened congregational meeting, the plaintiff by the unanimous vote of the congregation adopted a resolution affirming its belief in the scriptures of the Old and New Testaments, to be the word of God, the only infallible rule of faith and practice, and the Westminister Confession of faith and the Larger and Shorter catechisms as originally adopted by the church in the United States in 1861 to be the doctrine taught in the Holy Scripture and declared that the Presbyterian Church in the United States had violated and departed from the faith and practice of said church when the plaintiff became affiliated with it. By the adoption of the resolution, the plaintiff severed its affiliation with the Presbyterian Church in the United States. A copy of said resolution which is hereto attached, made a part hereof and marked Exhibit "B" was transmitted to

the Savannah Presbytery and the Presbyterian Church in the United States".

[37] WHEREFORE plaintiff prays that this its amendment be allowed, subject to objection.

/s/ Owen H. Page
Attorney for Plaintiff

[Verification, Order of Court and Certificate of Service omitted in printing.]

[75] STATE OF GEORGIA)
COUNTY OF CHATHAM)

IN THE SUPERIOR COURT OF SAID COUNTY

MARY ELIZABETH BLUE HULL MEMORIAL PRESBYTERIAN CHURCH
VS.
PRESBYTERIAN CHURCH IN THE UNITED STATES, ET AL.
} Case Number 5003

Amendments to Plaintiff's Petition

NOW COMES, plaintiff in the above captioned case and with leave of the Court first had and obtained makes and files this its amendments to its petition as follows:

1. Plaintiff amends its petition by adding thereto a new paragraph to be known as paragraph six (6) and to read as follows:

6. Plaintiff says a portion of its property, to-wit, Lots Numbered Fifty-three (53) and Fifty-four (54), Thomas Ward, Savannah, Chatham County, Georgia, situated at the Northeast corner of Bull and 37th Streets, having a frontage of one hundred twenty-five (125') feet on Bull street and a depth along 37th street of one hundred twenty (120') feet was acquired by deed dated January 3, 1914, from Savannah Trust Company. The aforesaid deed contained a trust provision, providing that said property was to be used as and for a place of worship by a Church of the Presbyterian denomination to be known as the MARY ELIZABETH BLUE HULL MEMORIAL PRESBYTERIAN CHURCH. This provision referred to the local church corporation and created a trust in favor of said local congregation. A copy of said [76] deed is attached hereto marked Exhibit "A" and made a part hereof.

2. Plaintiff amends its petition by adding thereto a new paragraph to be known as paragraph seven (7) and to read as follows:

7 (a). Plaintiff became affiliated with the Presbyterian Church in the United States in 1890 on a voluntary basis, but to plaintiff's knowledge has never been officially voted into the Presbyterian Church in the United States.

(b) Plaintiff contends and affirms that it was not created by the Presbyterian Church in the United States, but was organized and created as an independent Presbyterian Church, and therefore is not a creature of the Presbyterian Church in the United States. Plaintiff further shows that none of the defendants ever contributed any monies to purchase, build, operate or maintain said local church.

3. Plaintiff amends its petition by adding thereto a new paragraph to be known as paragraph eight (8) and to read as follows:

8 (a). In furtherance of the aforesaid trust provision, plaintiff is bound to uphold, administer, practice and teach the Presbyterian faith as it existed on the date of said conveyance in 1914, and as originally intended by the Congregation at the formation of plaintiff Church, and that any deviation from the fundamental, substantial doctrines and practices as originally held in 1890 and 1914, the date of the conveyance, would constitute an unlawful violation of the trust.

[77] (b) Plaintiff further alleges that the Presbyterian Church in the United States taught and practiced the Presbyterian faith on the date of said deed substantially in the manner as plaintiff. However, since that time the Presbyterian Church in the United States has plainly dis-

regarded its original constitution, perverted its accepted beliefs and departed from the Presbyterian faith and practice held at the time of the said conveyance, and that these changes are out of harmony with the Ecclesiastical Laws and principles in force at that time and that such violations constitute a revolutionary, fundamental, unlawful and radical deviation from the Presbyterian faith. Plaintiff alleges that the aforesaid deviations and radical departures are as follows:

A. Teaching and endorsing civil disobedience.

B. Ordaining women as preachers and ruling Elders.

C. Making pronouncements and recommendations which concern civil, economic, social and political matters.

D. Giving support to the removal of Bible reading and Prayer in the public schools.

E. Making declarations which would have the effect of assuming ownership of Local Church property.

F. Printing official publications which teach Doctrines fundamentally divergent to the Presbyterian Faith.

G. Distributing to the Presbyterian Churches a study booklet teaching universalism contrary to Presbyterian faith and doctrine, and commending [78] it to local churches, and refusing, when given an opportunity to pronounce its teachings erroneous, thereby giving sanction to universalism.

H. Invalidating and replacing parts of the Confession of Faith which the Presbyterian Church in the United States is bound to uphold.

I. Vigorously and continuously participating as an agency member of the National Council of the Churches of Christ in the United States of America in spite of repeated

requests from many Presbyteries to withdraw, and in so remaining a member, forces every Presbyterian Church and individual member to belong to the said council, and gives representative backing to actions of said council in the areas of sex, race and world affairs which are radical departures from the faith and practice of the Presbyterian Faith as it existed at the time of the aforementioned deed conveyance and organization of plaintiff church.

J. This connectional relationship to the said council is of such a constitutional nature, that the actions of the council are the actions of the members through representation, and that being a member of the Presbyterian Church in the United States and the National Council of Churches of Christ in the United States of America are one and the same, and this being the case, in order for a local Church to disaffiliate with the said council must disaffiliate with the Presbyterian Church in the United States.

K. The aforesaid deviations from the Presbyterian Faith have occurred since Plaintiff's affiliation with the [79] Presbyterian Church in the United States in 1890, and plaintiff; adhering to the standards, with their basic doctrines and practices, as accepted in 1890 and 1914, is the true successor of the original congregation and thus entitled to retain use and ownership of the property belonging to the congregation.

L. Plaintiff further contends that in order to remain true to the Presbyterian Doctrines and Practices in force in 1890 and 1914, Plaintiff found it necessary to withdraw its affiliation with the Presbyterian Church in the United States; such action taking place on April 17, 1966, by Resolution marked Exhibit "B" attached hereto and made a part hereof.

regarded its original constitution, perverted its accepted beliefs and departed from the Presbyterian faith and practice held at the time of the said conveyance, and that these changes are out of harmony with the Ecclesiastical Laws and principles in force at that time and that such violations constitute a revolutionary, fundamental, unlawful and radical deviation from the Presbyterian faith. Plaintiff alleges that the aforesaid deviations and radical departures are as follows:

A. Teaching and endorsing civil disobedience.

B. Ordaining women as preachers and ruling Elders.

C. Making pronouncements and recommendations which concern civil, economic, social and political matters.

D. Giving support to the removal of Bible reading and Prayer in the public schools.

E. Making declarations which would have the effect of assuming ownership of Local Church property.

F. Printing official publications which teach Doctrines fundamentally divergent to the Presbyterian Faith.

G. Distributing to the Presbyterian Churches a study booklet teaching universalism contrary to Presbyterian faith and doctrine, and commending [78] it to local churches, and refusing, when given an opportunity to pronounce its teachings erroneous, thereby giving sanction to universalism.

H. Invalidating and replacing parts of the Confession of Faith which the Presbyterian Church in the United States is bound to uphold.

I. Vigorously and continuously participating as an agency member of the National Council of the Churches of Christ in the United States of America in spite of repeated

requests from many Presbyteries to withdraw, and in so remaining a member, forces every Presbyterian Church and individual member to belong to the said council, and gives representative backing to actions of said council in the areas of sex, race and world affairs which are radical departures from the faith and practice of the Presbyterian Faith as it existed at the time of the aforementioned deed conveyance and organization of plaintiff church.

J. This connectional relationship to the said council is of such a constitutional nature, that the actions of the council are the actions of the members through representation, and that being a member of the Presbyterian Church in the United States and the National Council of Churches of Christ in the United States of America are one and the same, and this being the case, in order for a local Church to disaffiliate with the said council must disaffiliate with the Presbyterian Church in the United States.

K. The aforesaid deviations from the Presbyterian Faith have occurred since Plaintiff's affiliation with the [79] Presbyterian Church in the United States in 1890, and plaintiff; adhering to the standards, with their basic doctrines and practices, as accepted in 1890 and 1914, is the true successor of the original congregation and thus entitled to retain use and ownership of the property belonging to the congregation.

L. Plaintiff further contends that in order to remain true to the Presbyterian Doctrines and Practices in force in 1890 and 1914, Plaintiff found it necessary to withdraw its affiliation with the Presbyterian Church in the United States; such action taking place on April 17, 1966, by Resolution marked Exhibit "B" attached hereto and made a part hereof.

2. Defendants amend the Prayer to Plaintiff's Petition by striking Paragraph (c) in its entirety and inserting in lieu thereof a new Paragraph (c) and by adding a new Paragraph lettered (d), all as follows:

[85] "(c) That Plaintiff Corporation, its officers and members who voted in favor of the Resolution of April 17, 1966 as set out in Defendants' Cross-Bill, be enjoined permanently from appropriating to their use the property which is the subject of this Action as set out in Paragraph 3 of Plaintiff's Petition and Paragraph 6 of Defendants' Cross-Bill as amended."

"(d) That Defendant, the *SAVANNAH PRESBYTERY* of the *PRESBYTERIAN CHURCH IN THE UNITED STATES*, be decreed to have an implied trust over the aforesaid property as the rightful representative of said CHURCH for the use and benefit of those members adhering to the doctrines and regulations of the *PRESBYTERIAN CHURCH IN THE UNITED STATES.*"

WHEREFORE, PETITIONER PRAYS: That said amendments be allowed:

/s/ Frank S. Cheatham, Jr.,
Attorney for Defendants

[Order of court, verification and Certificate of Service omitted in printing.]

[39] STATE OF GEORGIA)
COUNTY OF CHATHAM)

IN THE SUPERIOR COURT OF CHATHAM COUNTY

EASTERN HEIGHTS PRESBYTERIAN CHURCH
VS.
PRESBYTERIAN CHURCH IN THE UNITED STATES, ET AL.
Case Number 5005

Amendment to Defendants' Cross-Bill

NOW COME, Defendants in the above styled Action and file this their Amendment as follows:

1. Defendants amend their Cross-Bill to Plaintiff's Petition by adding a new paragraph to be known as Paragraph "Eighteen" as follows:

"18. That in addition to the property described in Paragraph 3 of Plaintiff's Petition, Plaintiff Corporation owns the property known as Lots Eighteen, Twenty and Twenty-one, Block 14, Deiter Heights, Ross Ward, Savannah, Chatham County, Georgia, the deed to Plaintiff Corporation being dated June 7, 1952 and recorded in Deed Book 55-X, Folio 95, Chatham County, Georgia, Records. Defendants show that said property is used by said Plaintiff Corporation as a parsonage for the minister and is an integral part of the Church property."

2. Defendants amend the Prayer to Defendants' Answer and Cross-Bill by striking Paragraph (c) in its entirety and inserting in lieu thereof a new Paragraph (c) and by adding a new Paragraph lettered (d), all as follows:

"(c). That Plaintiff Corporation, its officers and members who voted in favor of the Resolution of April 17,

1966 as set out in Defendants' Cross-Bill be enjoined permanently from appropriating to their use the property which is the subject of this Action as set out in Paragraph 3 of Plaintiff's Petition and Paragraph 18 of Defendants' Cross-. [40] Bill as amended."

"(d). That Defendant, the *SAVANNAH PRESBYTERY* of the *PRESBYTERIAN CHURCH IN THE UNITED STATES*, be decreed to have an implied trust over the aforesaid property as the rightful representative of said CHURCH for the use and benefit of those members adhering to the doctrines and regulations of the *PRESBYTERIAN CHURCH IN THE UNITED STATES*."

WHEREFORE, PETITIONER PRAYS: That said amendments be allowed.

/s/ Frank S. Cheatham, Jr.,
Attorney for Defendants

[Order of court, verification and Certificate of Service omitted in printing.]

[42] STATE OF GEORGIA)
COUNTY OF CHATHAM)

TO THE SUPERIOR COURT OF SAID COUNTY

EASTERN HEIGHTS PRESBYTERIAN CHURCH

VS.

PRESBYTERIAN CHURCH IN THE UNITED STATES AND J. LEHMON BRANTLEY, CHAIRMAN OF THE ADMINISTRATIVE COMMISSION OF THE PRESBYTERY OF SAVANNAH

Case Number 5005

Amendment

NOW COMES THE PLAINTIFF in the above styled action and with leave of the court first had and obtained, files this its amendment to its petition:

1. By adding as parties plaintiffs in the above styled action the following: Frank L. Perry, Sr., John Bruning, Lester R. Sargent, Hardin C. Norman, and Armin S. Hubert, Trustees of Eastern Heights Presbyterian Church.

2. By adding at the end of paragraph 1, of said petition as amended: Said violations and departures specified in said resolution (Exhibit "B") constitute a substantial and fundamental deviation from the practices of the Presbyterian Church defined in the Book of Church Order: Chapter 1-2, 1-3, and Chapter 33-4 of Confession of Faith which provide:

1-2 "The power which Christ has given his Church in wholly moral and spiritual, and constitutes the Church a kingdom and government district, from the civil commonwealth. This power rests not in individuals but in the Church as a whole."

1-3 "The sole function of the Church are to proclaim, to administer and to enforce the law of Christ revealed in Scripture. The exercise of Church power has divine sanction only when in conformity with the Word."

33-4 "Synods are councils are to handle or conclude nothing but that which is ecclesiastical; and are not to intermeddle with civil affairs which concern the commonwealth unless by way of humble petition in cases extra ordinary; or by way of advice for satisfaction of conscience, if they be thereunto required by the civil magistrate."

In addition to the deviations and departures specified in [43] Exhibit "B" the Presbyterian Church in the United States has advocated the following:

1. Pronouncement in matters involving international issues such as the Viet Nam War.

2. Dissemination of publications denying the Holy Trinity and other publications violating the morals and ethical standards of the Presbyterian faith.

All of the above constitute a substantial, fundamental and radical departure and deviation from the faith dogma, practices of the Presbyterian Church in the United States as defined in the Book of Church Order. The deviations specified in Exhibit "B", and alleged, have occurred since the plaintiffs' affiliation with the Presbyterian Church in the United States in 1930.

The plaintiffs are seeking to protect the purity of their faith and avoid the propagation of one in conflict with that in existence at the time they affiliated. They as the loyal adherers should have title to the church property quieted and confirmed in them to preserve the trust.

3. By adding at the end of paragraph 3: Lots 1 through 7, Myers Park Place, Oliver Ward, Block 17, Sa-

vannah, Georgia, were conveyed by the Trustees of the Independent Presbyterian Church of Savannah to Eastern Heights Presbyterian Church, a religious corporation.

Lots 8 and 9, Oliver Ward, Savannah, Georgia, were conveyed by Bennie Barker to Frank L. Perry, Sr., et al., as Trustees of Eastern Heights Presbyterian Church.

Lots 18, 20, and 22, Block 14, Dieter Heights, Roos Ward, Savannah, Georgia, on which the church manse is located were conveyed by Ray Zoucks to Frank L. Perry, Sr., et al., as Trustees of Eastern Heights Presbyterian Church to be held for the use and benefit of the congregation of Eastern Heights Presbyterian Church.

[44] WHEREFORE plaintiff prays that this its amendment be allowed subject to objection.

/s/ Owen H. Page
Attorney for Plaintiff

[Verification, Order of Court and Certificate of Service omitted in printing.]

[87] STATE OF GEORGIA)
COUNTY OF CHATHAM)

IN THE SUPERIOR COURT OF SAID COUNTY

MARY ELIZABETH BLUE HULL MEMORIAL PRESBYTERIAN CHURCH
VS.
PRESBYTERIAN CHURCH IN THE UNITED STATES, ET AL.

Case Number 5003

Plaintiff's Amendment to Plaintiff's Amended Petition

NOW COMES PLAINTIFF in the above captioned case and with leave of the Court first had and obtained makes and files this its amendment as follows:

1. Plaintiff amends its petition by adding thereto the following to paragraph eight (8) (b) to be known as subparagraph M. and to read as follows:

8. (b) M. Plaintiff shows that defendants have further deviated from the Faith by the General Assembly declaring parts of the Confession of Faith, Chapter 3, "not essential to Reformed Theology" and not an adequate statement of Faith. This section deals with the doctrine of predestination and is a fundamental and vital tenet of all Presbyterian Churches.

2. Plaintiff amends its petition by adding thereto the following to paragraph eight (8) (b) to be known as subparagraph N. and to read as follows:

8. (b) N. By approving reading material that denies the existence of the Trinity, a basic fundamental belief of all Presbyterian Churches.

WHEREFORE plaintiff prays that this its amendment be allowed subject to objections.

/s/ Richard T. Cowan
Attorney for Plaintiff

[Order of Court and Certificate of Service omitted in printing.]

council is. "It belongeth to synods and councils, ministerially, to determine controversies of faith, and cases of conscience; to set down rules and directions for the better ordering of the public worship of God, and government of his [160] church; to receive complaints in cases of maladministration, and authoritatively to determine the same; which decrees and determinations, if consonant to the word of God, are to be received with reverence and submission, not only for their agreement with the word, but also for the power whereby they are made, as being an ordinance of God, appointed thereunto in his word."

* * *

[163] *Mr. Cowan*: Do you have any other deviations there that the church—objected to?

The Court: Let's don't give it a name. You refer to it as a deviation. Something that the jury will have to be called upon to decide, so let's don't use the term like—

Mr. Cowan: What else do you have—

Rev. Brewton: Well, I'm going to try to be quick on this—feel like we're maybe dragging it out too long. The changes in the Constitution providing for the ordination of women into the ministry and eldership—this act was in direct violation of the form of government and the Holy Scriptures; the Book of Church Order in outlining the questions asked of elders and ministers speaks of them being men and brothers and the Scriptures relating to the portion of the form of government speaks of these men as being wise stewards and names them as men and we have some quotations out of the Book of Church Order in reference to these violations. In other words, to ordain a woman as a preacher is a violation of the Book of Church Order which is one of the documents in the Constitution [164] of the Presbyterian Church, U. S. and the General Assembly voted to do it.

Mr. Cowan: Reverend Brewton, do you have the Book of Church Order?

Rev. Brewton: I don't have a Book of Church Order with me. I need one. . . Take Chapter 26, paragraph 2 from the Book of Church Order, "When a congregation is convened for the election of a Pastor, the Church Session shall appoint one of their number to call the congregational meeting to order, to lead the people in solemn prayer for Divine guidance, and to preside until the congregation shall elect a Moderator. For the orderly conduct of the election of a Pastor or an Associate Pastor, it is desirable that the congregation elect a Minister of the Presbyterian Church in the United States to preside. But if this is impracticable, they may elect any male member of that church as Moderator for that meeting."—"They may elect any male—adult male member of that church as Moderator for that meeting." And then in—

Mr. Cheatham: Would you give the page, please?

Rev. Brewton: That is found on page 68 and 69, the Book of Church Order, the Presbyterian Church in the United States. Now, also in Chapter 12—

The Court: May I interrupt you just a minute, Reverend? Some of us not being Presbyterian, the Book of Church Order, that's more or less the Constitution of the Presbyterian Church, isn't it?

[165] *Rev. Brewton:* The Constitution of the Presbyterian Church, Your Honor, consists of five documents: The Confession of Faith, which was formulated by the Westminster Assembly of Divines in the 1600's, held by all Presbyterians as the doctrinal statement of Presbyterians. That's the Confession of Faith. The Book of Church Order is a part of the Constitution—

The Court: Is it amendable?

Rev. Brewton: It's amendable; yes, sir.

The Court: How is it amended?

Rev. Brewton: By two-thirds majority of the, I believe, of the Presbyteries—I'm not sure exactly of the details there but it is amendable; yes, sir. You can amend the Book of Church Order according to constitutional means. I will say that. Now, of course, this is an opinion still.

The Court: Well, I am kind of interested in, for instance, ordaining females. Could the Book of Church Order be amended to provide—

Rev. Brewton: Yes, sir—

The Court: —that women be ordained as—

Rev. Brewton: Well, could I finish answering the question about the Constitution? The Book of Church Order, the Confession of Faith, The Larger Catechism, The Shorter Catechism, and the Directory for Worship: those five documents comprise the Constitution of the [166] Presbyterian Church in the United States. Now, the Book of Church Order, as well as the Confession of Faith, is amendable.

The Court: By whom?

Rev. Brewton: By the General Assembly, the highest judicatory of the church.

The Court: Who composes the General Assembly?

Rev. Brewton: Representatives from the individual Presbyteries.

The Court: Was your church represented at any of these meetings that you're talking about?

Rev. Brewton: My church, being a member of the Savannah Presbytery, was represented. We, in the Savannah Presbytery, this thing came up for our discussion. We were allowed to debate the matter of ordination of women elders and preachers, and if the gentlemen who were there at that meeting will remember, you will note that I was one of the ministers who was strongly opposed to this—opposed to the amendment to the Constitution on the grounds that it violated the Bible. Now, in the Presbyterian Church your supreme authority is the Holy Bible.

TESTIMONY

Partial Testimony of Reverend Clifford Brewton

* * *

[147] *Rev. Brewton:* I would like to start here with a paragraph—I will read two complete paragraphs if you don't mind, two complete paragraphs and it will be about a complete page out of the book. "During the centuries people have [148] used various methods of trying to get their problems solved: revolution, insurrection, immigration, strikes, shutdowns, sit-ins, picket lines. Each of these has had varied success in achieving results that were looked for. The phrase civil disobedience is something Gandhi has brought into our English language, and he says he got the idea from Jesus and the Sermon on the Mount. Today's reference to Luke 20 is of importance here. Jesus tells his questioner to give to Caesar the things that are Caesar's, but to God the things that are God's. This not only means that I pay my legitimate taxes to Caesar, and go to church on Sunday and put something into the offering plate for God. It is not quite as simple as that. It may also mean that I withhold from Caesar what Caesar thinks is his, but what really belongs to God! The disciples ignored established customs when they walked through the cornfields, plucked some corn and ate it; this was threshing in the judgment of the scribes, and was prohibited. Jesus violated the code of the Pharisees when he healed people on the Sabbath for the law at that time prohibited this. To help a sick man takes priority over the Sabbath laws; a moral law takes precedence over a civil law. You do not start a revolution; you do not bring in tanks and set machine guns up in front of the mayor's residence to shoot him when he comes out. You quietly make your protest known, persistently you make it known. When asked about it you give your morally justifiable rea-

sons for doing what you do. You appeal to God and his righteousness rather than to the laws of the land. And you keep at it until the laws [149] of the land are changed to conform to what you believe is right. And if the law says you may not picket or gather peaceably for purposes of protest, then you violate the law, appealing to a higher law to justify your actions. And, of course, you take the consequences." There's some more, but I won't read it out of that one.

Mr. Cowan: Lesson for older (indicating)—

Rev. Brewton: This is the—Quarterly for Older Youth that we quoted from, Mr. Cowan, and the other one is the Earnest Worker, resource study guide for teachers.

Mr. Cowan: And this is Plaintiff's Exhibit 15.

Mr. Cheatham: If you will, identify the page and everything.

Rev. Brewton: We are reading now from page 96 and 97 from the Earnest Worker dated April, May and June, 1964, A guide for Church School Teachers and Leaders. "It may seem strange that Jesus did not tangle with the Roman government until he stood before Pilate and Herod. We have no record of him advocating civil disobedience; rather, he advocated paying taxes to Caesar, and said that if a hated Roman solider forced them to carry his pack for a mile, they should go him one better and carry it two miles! It seemed that Jesus did nothing to increase the bitterness of the Jewish people in the presence of a cruel occupation government. Paul reflects this in what he says in Romans 13. This was basic: Christian people must obey the government under which they live, because the government is ultimately instituted by God for man's good. But there was more. God was to get his due, too. [150] Caesar might get his tax money; but God was to get what was his. In Matthew 6:33 Jesus said that we ought to seek first God's Kingdom and his righteousness. To be sure,

Jesus said this in a framework of a discussion on anxiety, but the demand is equally strong when you take it out of that context. Jesus agreed that God had priority over everything and everyone else. This means that there are times when the civil authority (or church authority, for that matter) must be disobeyed." Now, ladies and gentlemen, and Your Honor, I could read more from here. I could read the last paragraph and I won't take time to read the whole—if you want me to I will read the whole Chapter.

Mr. Cowan: Just read the last paragraph.

Rev. Brewton: All right. "The last two Scripture passages to be studied by your class point out possible areas of conflict between obedience to government (a man-made structure) and obedience to God. Two points should be made here:" Now, this is a summary. "We must at all times be aware of the danger that a government may do or ask an individual to do something which conflicts with one's obedience to God." And number two, "When such a situation arises it should be made clear that a Christian should try to change such a situation without violence of the law. But, if such attempts fail, civil disobedience may be called for. A Christian is first of all called to give ultimate allegiance to God, not government." Now, it is these two books, study materials and the Quarterly for Older Youth, the Earnest Worker, to be used as a guide for teachers in the [151] Sunday School of the Presbyterian Church, U. S., plainly, as you have heard, advocated disobedience to civil law under certain circumstances.

* * *

[154] *Mr. Cowan:* Read from page 160 of the Minutes of '65, please, sir; the General Assembly's pronouncement on civil disobedience.

Rev. Brewton: 1965?

Mr. Cowan: Yes, sir. One sixty.

Rev. Brewton: "This brings us to the problem of civil disobedience: the open, non-violent and conscientious refusal to obey a law or laws, as a means of appeal to a higher law, combined with the willing acceptance of the penalty. It is an extreme demonstration of dissatisfaction with some aspect of society. It also presents in its purest form the problem of the relation of the Christian to the state. Paul, and the Confession of Faith as well, affirm that governments are instituted by God and should therefore be obeyed. However, the civil magistrates are also bound under their charge: "to protect the person and good name of all their people in such an effectual manner as that no persons be suffered, either upon pretense of religion or infidelity, to offer any indignity, violence, abuse or injury to any other person whatsoever." "(Westminster Confession, Chapter 25, paragraph 3.) It needs no elaboration that within the province of our church, we have often kept silent, though men, because of race, have suffered 'indignity, violence, abuse, and injury.' It is true that within our system of government, means are provided, through the law, to present and adjudicate grievances for such injustices. Yet, when due course of civil law is denied or abridged, the Christian, for whom 'God alone is Lord of conscience.' may validly appeal to the Higher Law, led by the inner [155] witness of the Holy Spirit, speaking in and through the scriptures. This great ordering Word may lead him against the world, against the establishment of the civil magistrates. But he should be very cautious about taking such a lonely position and should hold it only in fear and trembling. If it leads him into civil disobedience he should not try to justify his position before men. He has violated the law, the public standard of justice, and hence must recognize his liability to the judgment of the civil court. The church exists to unite men by God's grace with themselves, with

God, and with their fellows—to make them whole. Therefore, it should give the support of Christian compassion to any member who, following his conscience in obedience to the Word, engages in civil disobedience. The methods of achieving justice which have been delineated here, while accomplishing in varying measures this end, cannot, in fact, bring to fruition our desire for unity in the bond of peace. Therefore, we as Christians are called upon to look beyond these methods to work toward the reconciliation of all parties involved by encouraging dialogue in the spirit of Christian love."

* * *

[156] *Rev. Brewton*: All right; be happy to read the whole thing. I'm reading here from page 90 and 91 out of the Minutes of the General Assembly, the Presbyterian Church in the United States, the highest church tribunal of the Presbyterian Church, U. S. "The Assembly notes—" well, first of all we start back here; starts with Overture Number 4: "For Overtures 33, 57, 60, 67, all seeking Assembly action on the 1965 Assembly's declaration on Civil Disobedience—" the one that I just read for you—we answer as follows: "We affirm (sic) the spirit and intent of the 1965 General Assembly statement concerning Civil Disobedience—" that's the one I read over there. "The Assembly declares—" no, wait—"—and offer the following paper as clarification of that spirit and [157] intent. The Assembly notes the unrest and disturbance within parts of the church resulting from the widely varying interpretations of its declaration on Civil Disobedience. The Assembly declares its understanding of this matter in the following paragraphs. The Presbyterian Church, U. S. affirms its belief in a society governed by the rule of law, arrived at through processes resting upon the consent of the governed. We fully (sic) affirm our confidence in and support of the presently con-

The Court: Who interprets that? Who interprets the Bible?

Rev. Brewton: The—

The Court: Isn't it a matter of individual interpretation?

Rev. Brewton: The Confession of Faith says that synods and councils since apostolic times have [167] erred and do err and are not to be made the rule of faith and practice, and in that respect they—they point to the Holy Scriptures. But at the same time, Your Honor, they state that the deliberations and the decrees of the General Assembly are to be received with reverence and submission, and when a Constitution of the Presbyterian Church is changed, even if it violates the Bible, which is the supreme document, then you are duty bound to either follow that and remain true to the constitutional form of government or if you believe that this is a violation of God's holy word then you have no other alternative but to remove yourself from that jurisdiction. There is no—no provision—there is no provision—

Mr. Cheatham: I am going to object to that statement unless he can show it in writing—

The Court: Well, he may be going just a little beyond the question that I asked him. I was merely—

Rev. Brewton: But you can amend the Book of Church Order and it was amended and it did include male—women as well as men for ordination.

The Court: And in that proceeding where that was done, as I understand it, your church, or your congregation was represented? They might not have agreed but you were represented.

Rev. Brewton: We were represented.

The Court: They were represented?

[168] *The Witness*: We were represented.

The Court: All right.

* * *

[171] *Rev. Brewton:* 1961, Minutes of the General Assembly—you must realize that keeping track of all of this is pretty difficult. The statement in part reads from the Minutes of the General Assembly, 1961, page 139.

Mr. Cheatham: I don't mean to interrupt, but if you have it here, read it from the book. I assume you have it.

Rev. Brewton: I have a photostatic copy, a zerox copy of the page.

Mr. Cheatham: For the time being go ahead and read that and let's see if they can find the original.

Mr. Cowan: You can read that. Go ahead.

[172] *Rev. Brewton:* "The General Assembly declare that in its judgement the doctrine of foreordination to everlasting death as formulated in the Confession is not an adequate statement of Christian faith, because it implies, regardless of the intention of the authors, an eternal negative decree; and that the doctrine, as stated in the Confession, is not essential to Reformed theology as is indicated by its absence in this vigorous form in such authentic Reformed creeds as The Scots Confession in 1560, the Second Halvetic Confession, and the Heidelberg Catechism." Reading from the Minutes of the General Assembly, page 139, paragraph 2 of a Report submitted by John R. (sic) Leith, J. Rodman Williams, Shirley Guthrie and Harry Goodykoontz—or something.

Mr. Cowan: Reverend Brewton, has the Church made pronouncements and recommendations of giving support to removal of Bible Reading and prayer in public schools?

Rev. Brewton: Yes.

Mr. Cheatham: Here again now I'm going to object unless the documents are in evidence.

The Court: Well, he's looking for something.

Rev. Brewton: Minutes of the General Assembly, 1965 page 77. 1965—77. "The Overture Number 4 from the

Everglades Presbytery requesting endorsement of an amendment to the Constitution of the United States to allow voluntary Bible Reading and Prayer in Public Schools be answered as follows: Because it is unwise to give support to a constitutional amendment which has not been written or submitted either to Congress or to [173] the respective state for approval; and because the 104th General Assembly affirmed clearly the basic principles of our denomination in this matter, to wit, 'We hold that religious ceremonies may be held in public schools on a permissive, voluntary basis without violation of conscience. There is a valid distinction between the State's compelling its constituents to gather for a religious ceremony and the State's permitting those who have gathered to acknowledge a higher power and to make a blessing upon their corporate life in a way generally and prudently agreed upon by them.' That is a statement from the Minutes of the General Assembly, page 77, where they endorse the Supreme Court's decision concerning the removal of Bible—".

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[174] *Rev. Brewton*: The Minutes of the General Assembly, 1966, page 171, "Policy Statement on Viet Nam". "Adopted by the General Board of the National Council of Churches on December 3, 1965."

Mr. Cowan: Read that.

Rev. Brewton: "We confront with sorrow the profound and widespread war-suffering of the Vietnamese people both North and South and others who are involved in the conflict, including personnel in military and other forms of service and families of our own and other nations. The issues in the war and possible solutions are very complex and there are sincere differences among us. Some believe that the military effort should be continued and that unless the spread of communism by violent infiltration is checked by further military means, liberties

of not only South Viet Nam but of South East Asia are imperiled. In this view the war must go on until the military results bring the Viet Cong and North Vietnamese to the conference table. Others believe that: A continuance of the fighting will not facilitate negotiations and will not serve the cause of peace or justice or freedom; it will mean a rising toll of death and sorrow for the Vietnamese people and increasing disillusionment and division on all sides; there is the grave possibility that a prolonged war will escalate further and spread, thus jeopardizing all of mankind; the struggle, and especially the bombing of North Viet Nam may delay progress in improved relations with the Soviet Union and in agreements for arms control and disarmament; within the United [175] States we also see, as associated with all wars, depersonalization of life and increase in immorality. We hold that within the spectrum of their concern Christians can and do espouse one or the other of these views or still other views and should not have their integrity of conscience faulted because they do. We note with approval that: 1. The President of the United States on April 7, 1965, and on other dates since then has publicly committed the Administration to the principle of unconditional discussions leading to the negotiation of the cessation of hostilities and a peace settlement, has expressed readiness to utilize mediation efforts by United Nations members, and expecially by United Nations Secretary-General U Thant; and that he has proposed a billion dollar development fund for Southeast Asia. 2. The United States Armed Forces have sought to avoid bombing the population centers of North Viet Nam. 3. The Secretary General of the United Nations has indicated his readiness to use his good offices to bring about the cessation of hostilities. We believe that a solution of the problem in Viet Nam can be essentially advanced only when action is moved from the battlefield to the conference

table. We pray that this may be speedily accomplished. We would also remind our people that the application of the basic Christian ethic of love and reconciliation should be in our minds and wills as we try to find solutions to this problem. We therefore recommend that the United States, [176] in the interest of bringing peace and growing justice and freedom to the territories of Viet Nam, should now consider the following suggestions: 1. Continue to reaffirm and manifest its readiness for unconditional discussion and negotiation in such manner as will remove any uncertainty about official policy relating to the termination of military action. Such reaffirmation might be strategically expressed by the cessation of all bombing of North Viet Nam for a sufficient period to create more favorable circumstances for negotiations to begin and with a simultaneous effort to induce the North Viet Nam Government to stop sending military personnel and material into South Viet Nam. 2. Adhere strictly to the policy of avoiding the bombing of centers of population of Viet Nam. 3. Seek to alleviate the desperate plight of the non-combatants in South View Nam by increased efforts to prevent their becoming the victims of the hostilities. 4. Request the United Nations to begin negotiations wherever and whenever possible for a cease-fire agreement (including cessation of terrorist activities) under United Nations supervision, among the governments of the United States, of North and South Viet Nam and other interested parties, including representatives from the National Liberation Front; such negotiations are imperative and may be possible on the basis of the mutual interest of sparing the population further and frightful suffering. Request the United [177] Nations, further, as soon as may be possible, to convene a peace conference regarding Viet Nam, with participation of all interested governments and with representation for the National Liberation Front to explore the

bases of a settlement of the long-term issues and the means to give such a settlement effective international guarantees.

5. Make clear that a primary objective of a settlement of the Viet Nam conflict is the independence of South Viet Nam from outside interference, with complete liberty to determine the character of its future government by the result of a peaceful, free and verified choice of its people. The choices might include whether it wishes to establish a coalition of Nationalists and National Liberation Front, or whether it wishes to be united with North Viet Nam (perhaps through a plebiscite), or to operate as an independent, neutral and non-aligned state, or whether it wishes to constitute with Cambodia and Laos a buffer-zone between the communist and non-communist spheres of influence, freely trading with both, or whether it wishes to join the Southern Asia Treaty Organization or the free states of South East Asia or elsewhere.—"

The Court: Reverend, may I interrupt you just a moment? One of the issues we have for determination is whether there has been a deviation—faith and doctrine—Westminster Confession of Faith. Is it your contention that that violates—could you refer me to the provision of the Confession of Faith or the [178] Book of Church Order that that violates?

Rev. Brewton: Chapter 33, paragraph four of the Confession of Faith of the Presbyterian Church of the United States—this card here—now, you heard me read that section from the North Viet Nam statement. This is a policy statement, a policy statement on Viet Nam.

The Court: Then it's your contention that it's intermeddling with the civil authorities. Is that right?

Rev. Brewton: Well, you asked me—I will tell you. In my opinion, it is.

* * *

[188] *Mr. Cheatham:* All right, sir. Now, will you get your Book of Church Order and turn to page 82? I want you to [189] read to the jury 30-1 and 30-2 which shows how the Book of Church Order and the Confession of Faith may be amended.

Rev. Brewton: "Amendments to the Book of Church Order may be made only in the following manner: (1) The approval of the proposed amendment by the General Assembly and its recommendation to the Presbyteries. (2) The advice and consent of a majority of the Presbyteries. (3) The approval and enactment of a subsequent meeting of the General Assembly. And 30-2; Amendments to the Confession of Faith and Catechisms of this Church may be made only in the following manner: (1) The approval of the proposed amendment by the General Assembly and its recommendation to the Presbyteries. (2) The advice and consent of three-fourths of the Presbyteries. (3) The approval and enactment by a subsequent meeting of the General Assembly. These provisions can be amended only by the same method as they prescribe for the amendment of the Confession of Faith and the Catechisms of this Church."

Mr. Cheatham: So this sets out the exact procedure that must be followed—in the Book of Church Order and the Confession of Faith?

Rev. Brewton: Yes.

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Partial Testimony of Dr. Akin Taylor

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[198] *Mr. Page:* Would you please describe or delineate the general jurisdictional area of the Presbyterian Church in the United States, or the southern branch?

Dr. Taylor: Well, our general jurisdictional area is limited to the southern states although there are a handful of congregations outside that geographic area in states

of New Mexico, Ohio and—I believe they are all in New Mexico and Ohio, additional congregations.

Mr. Page: Doctor, you mentioned a schism of 1861. Will you briefly tell the Jury what precipitated this schism and what then developed within the Presbyterian Church?

Dr. Taylor: 1861. Well, the—at the time of the Civil War the Presbyterian Church was already divided. A doctrinal dispute had separated the two branches into two sections, both north and south, I mean both of the [199] sections were north and south. Then after the Civil War was precipitated the question of political allegiance came into the top Court of the Church and whether or not the Christian in conscience should swear allegiance to the Federal government as a part of his church membership responsibilities. And the southern representatives of one of these two divisions withdrew and constituted later the Presbyterian Church in the Confederate States of America. They then united with the southern half of the other group which had separated about four years, three years previously.

Mr. Page: Now, on what level did this renunciation of division take place in 1861, or thereabouts? What level of adjudicatory did it take place?

Dr. Taylor: Well, the representatives of the General Assembly withdrew during the meeting of the General Assembly, but—in 1861, withdrew from the General Assembly. During the next year individual Presbyteries and individual Congregations declared themselves independent or severed from the parent Presbyterian body at the particular level involved. Individual Presbyteries declared themselves independent and separated. Individual congregations declared themselves independent and separated—leaving in effect, a totally unconnected or disconnected group of Presbyteries and congregations. Representatives of these came together in a sort of a preliminary conven-

tion to decide if they wanted to come together and organize a Church, but at the time they were separate and independent, having separated from the northern church and they came together for the purposes of organizing a church in Augusta, Georgia about the year—about a year, not quite a year—it was in December—after [200] the meeting of the General Assembly from which their representatives had separated eight months before.

Mr. Page: When those—when those congregations left at this particular time, did they take their property with them?

Dr. Taylor: Yes, sir

Mr. Page: When the Presbyteries left at that time, if they were vested with any property, did they take the property with them?

Dr. Taylor: Yes, sir.

Mr. Page: When the Synod left at that time if they were vested with any property, did they take that with them at that time?

Dr. Taylor: Yes, sir.

Mr. Page: Was there ever any attempt by the Presbyterian Church from which this group had severed themselves, subsequent to this action, either during the hostilities or after the termination of the War Between the States, to re-take any of these properties?

Dr. Taylor: Not any of the properties involved in the original assembly which constituted the Confederate Church.

Mr. Page: As I recall, a property incident arose involving some Synods within the entire Church body prior to 1861; some schism of 1839. Are you familiar with this, sir?

Dr. Taylor: 1836.

Mr. Page: 1836. I beg your pardon; 1836.

Dr. Taylor: In 1836 the division occurred between what was known as the old school—

Mr. Cheatham: No, I am going to object to this question. It definitely calls for hearsay—

[201] *Mr. Page*: Well, now—now, I'm going to get to it.

Mr. Cheatham: Well, then, let's get to it first—so I'll know what you are talking about.

Mr. Page: This has already been entered by stipulation. It's a copy of Beard's Digest, page 800.

Mr. Page: Doctor, will you look at this copy? We'll mark it plaintiffs'—Joint Exhibit, Eastern Heights and Hull. This has been entered as evidence by agreement of counsel.

Dr. Taylor: You want me to describe, that—?

Mr. Page: Yes. If you will, read the pertinent section from it and then describe—then give the historical background on it.

Dr. Taylor: Read it first before I describe the background?

Mr. Page: I think you'd better read the pertinent section if you will, please, as applies to this schism or division and then if you will explain the historical background.

Dr. Taylor: This body—this is the General Assembly of the old school, one of the two halves of the 1936—1836 split, speaking: "This body considers itself and the Church at large bound, as both have been not only willing, but desirous, to adjust all claims against the corporate property of the Church, whether legal or equitable, in the most prompt, fair, and liberal manner. This is especially the case touching any claims which may exist on the part of the four Synods of Utica, Geneva, Genesee, or the Western [202] Reserve which were declared in 1837 to be no part of the Presbyterian Church, or on the part of those who seceded from the Church in 1838, or on the part of any body constituted out of the whole or any part of these elements. And that, in regard to all and each of these bodies and persons, the Assembly will faithfully adhere to

any pledge or promise, express or implied, which it can justly be construed ever to have made, and will fulfill every expectation which it ever knowingly allowed to be cherished."

* * *

[204] *Mr. Page:* Now, would you read . . . just from that part of the Resolution which applied to Synods which were removed?

Dr. Taylor: . Well, it says this especially touches the claims of property of these four Synods.

Mr. Page: All right. Go ahead.

Dr. Taylor: "This body considers itself and the Church at large bound, as both have not only been willing, but desirous, to adjust all claims against the corporate property of the Church, whether legal or equitable, in the most prompt, fair, and liberal manner."

Mr. Page: All right. Following that Resolution, what action then happened regarding the four—the Synods that were kicked out?

Dr. Taylor: The property that they claimed was given to them. The General Assembly relinquished claims upon any property that might have belonged to these groups that separated.

Mr. Page: Thank you very much. Now, Doctor, coming a little more current in our historical presentation let me—would you give me the Minutes of 1967, please, and 1875 of the General Assembly? . . . . Doctor, I hand to you two books which are one, the Minutes of the [205] General Assembly of the Presbyterian Church of 1867 which will be marked Exhibit of the plaintiff—these have been agreed to by stipulation, gentlemen of the Jury. Also the Minute Book of the General Assembly of 1875—

Mr. Cheatham: Let me have the pages.

Mr. Page: Referring to these two documents, Doctor Taylor, would you—

Mr. Cheatham: Excuse me, Mr. Page. When you come back will you bring me that Resolution of 1830 something—that—introduced—

Mr. Page: Yes.

Mr. Page: Do you have the—

Dr. Taylor: 1867; yes, sir.

Mr. Page: Would you read for the Jury the reference in the Minutes of 1867, please?

Dr. Taylor: Well, there is a portion of a long document which would read as follows: "This Assembly cordially approves the determination of the Synod of Kentucky to assert fully all of its legal claims as a part of the Presbyterian Church of the United States of America and to reserve all its legal rights of property as a Synod in any union which may be formed with this Body."

Mr. Page: All right. Now, this Resolution or did this Resolution follow the . . . formation of the Presbyterian Church of the Confederate States on or about 1861, sir?

Dr. Taylor: I beg pardon, sir. Now—how did you connect that?

Mr. Page: This Resolution or the reference that you just read from, was it adopted subsequent to the formation [206] of the Confederate or Presbyterian Church of the Confederate States, that you just made reference to?

Dr. Taylor: Yes, sir; this was about seven years later—six years later.

Mr. Page: Was the Presbyterian Church of the Confederate States a fore-runner of the, what is known as the Presbyterian Church in the United States, south?

Dr. Taylor: Yes, sir.

Mr. Page: Now, would you explain, please, Doctor, the significance of that . . . minutes that you just read from?

Dr. Taylor: After the Civil War, the Synod of Kentucky separated from the Northern Presbyterian Church.

It didn't separate until after the—it stayed as a part of the Northern Presbyterian Church until after the Civil War, but after the Civil War the Northern Presbyterian Church continued a spirit which the Kentuckians considered to be vindictive with respect to the Southern Church and the Synod of Kentucky after the Civil War reacted against the spirit of vindictiveness on the part of the Northern Church, withdrew from it and applied for membership [207] to the Southern Church, and in their application to the Southern Church they asked the Southern Church what would be their property rights if they should come in, and the paragraph that I have read is the paragraph of the General Assembly speaking to the Synod of Kentucky telling them what their property rights would be should they come into the Southern Church.

Mr. Page: And read again, what did they say in that communication to the Kentucky Synod if you come in what will—"what claim, if any, will we have on your property."

Dr. Taylor: "The Assembly cordially approves the determination of the Synod of Kentucky to assert fully all of its legal claims as a part of the Presbyterian Church of the United States of America and to reserve all its legal rights of property as a Synod in any union which may be formed with this Body."

Mr. Page: Now, when it left—this Synod, left the Presbyterian Church of the U. S. A., do you recall whether there was any attempt to take that property from them?

Dr. Taylor: Yes. Now, when—when the Synod of Kentucky suffered its various divisions there was rather general [208] litigation.

Mr. Page: Was one of the—one of those—was one of the cases that resulted in that litigation identified as what is known as Walnut Street Church?

Dr. Taylor: Yes; one of these was the Walnut Street Church of Louisville, Kentucky, the third Presbyterian Church of Louisville, Kentucky

Mr. Page: Has this become quite, shall we say, illustrious in this type of litigation and is it now known as Watson versus Jones?

Dr. Taylor: Yes. The case of the Walnut Street Church in Louisville at the time of the separation of the Synod of Kentucky has become, more or less, the—I don't know—the, the grand-daddy case in matters of property litigation between, between churches.

Mr. Page: Now, Doctor, what has historically been the attitude of the Presbyterian Church in the United States, let's say in the year 1875, toward the decision of Watson versus Jones?

Mr. Cheatham: That's calling for—

Mr. Page: Well, we're going to introduce—I am going to introduce the minutes of the General Assembly.

Mr. Cheatham: Well, that should be done first.

Mr. Page: Will you please refer to the minutes of the General [209] Assembly of 1875 which records the case of Watson versus Jones?

Dr. Taylor: Well, it doesn't record the case of Watson versus Jones. It comments on it.

Mr. Page: Well, comments—I beg your pardon. Comments on the Walnut Street case.

Dr. Taylor: This is in 1875.

Mr. Page: All right, sir. Would you please read that?

Mr. Cheatham: Will you give the page and all that, please, sir?

Dr. Taylor: Minutes of 1875, page 88. This is Presbyterian Church, U. S. South.

Mr. Page: That's correct. These have been introduced—by stipulation, they are in evidence. You may proceed to read.

Dr. Taylor: "And now, without entering into a discussion concerning the decision of the Supreme Court of the United States, in the case of the Walnut Street Church, Louisville, Kentucky, or how far the action of the General Assembly (North) of 1872, in approving the principles there laid down, was inconsistent with the action of both the Old and New School Assemblies in approving precisely the opposite principle laid down by the courts of Pennsylvania, in the controversy of 1837 and 1839, we here propose that this whole matter shall be [210] submitted to arbitration on the principles presented in the paper adopted by the Old School Assembly of 1839, and of which, for convenient reference, as well as general information, a copy is here given, as follows—" and then follows a quotation from 1839.

Mr. Page: All right. Well, let's—just so the Jury keeps this in proper . . . let's go back and quote from 1839, which is a part of those minutes, so that they will understand what is being done by the General Assembly in 1875 with regard to property rights.

Dr. Taylor: This is the one that we just read a few minutes ago in division between Old and New School. "That this body considers itself and the Church at large bound, as both have been not only willing, but desirous, to adjust all claims against the corporate property of the Church, whether legal or equitable, in the most prompt, fair, and liberal manner." That's all.

Mr. Page: By that action of the General Assembly of 1875, did it, in effect, reject Watson versus Jones?

Mr. Cheatham: Well, now that's calling for an opinion.

The Court: I will sustain your objection.

Mr. Page: Subsequent to 1875, has the Presbyterian Church in the United States ever specifically revoked the [211] finding on Watson versus Jones as identified in the Minutes of 1875?

Dr. Taylor: The Presbyterian Church has not, by name, mentioned Watson versus Jones in any Minute except this one. The Presbyterian Church in the U. S. has taken frequent action with respect to property rights. Actions that have been taken with respect to property rights have in themselves constituted a non-recognition of Watson versus Jones.

Mr. Cheatham: Well, I again object . . . opinion.

The Court: I sustain your objection. Just disregard that.

Mr. Page: Well, however, did they ever specifically—did they ever—has any action of the Presbyterian Church . . . the General Assembly specifically by exact terms and words rejected or revoked or reversed that Minute of 1875?

* * *

[212] *Mr. Cheatham*: They are all over the place.

Mr. Page: Would you look at Section 6 dash 3, please? Would you read from it, reference in The Book of Church Order adopted by the General Assembly of the Presbyterian Church relative to property rights?

Dr. Taylor: "6-3. If a church is dissolved by the Presbytery, [213] or otherwise ceases to exist, and no disposition has been made of its property, those who hold the title to the property shall deliver, convey and transfer to the Presbytery of which the church was a member, or to the authorized agents of the Presbytery, all property of the church; and the receipt and acquittance of the Presbytery, or its proper representatives, shall be a full and complete discharge of all liabilities of such persons holding the property of the church. The Presbytery receiving such property shall apply the same or the proceeds thereof at its discretion."

* * *

[213] *Dr. Taylor*: "If a particular church is incorporated, the provisions of its charter and bylaws must always be in accord with the Constitution of the Presbyterian Church in the United States. If the congregation is an incorporated body, all the communing members on the active roll of that church shall be members of the corporation. The officers of the corporation, whether they be given the title 'Trustee' or some [214] other title, shall be elected from among the members of the corporation in a regularly constituted congregational meeting. The powers and duties of such officers must not infringe upon the powers and duties of the Session or of the Board of Deacons. All funds collected for the support and expense of the church and for the benevolent purposes of the church shall be controlled and disbursed by the Session and the Board of Deacons as their relative authorities may from time to time be established and defined. To the officers of the corporation may be given by the charter and bylaws of the corporation any or all of the following responsibilities: The buying, selling, and mortgaging of the property for the church, the acquiring and conveying title to such property, the holding and defending title to the same, the managing of any permanent special funds entrusted to them for the furtherance of the purposes of the church, provided that such duties do not infringe upon the powers and duties of the Session or of the Board of Deacons. In buying, selling, and mortgaging real property such officers shall act solely under the authority of the corporation, granted [215] in a duly constituted meeting of the corporation."

* * *

[219] *Dr. Taylor*: Well, in 1875 there were committees of the Assembly of the Northern Presbyterian Church and committees of the Assembly of the Southern Presbyterian Church, that were in correspondence with a view, a pos-

sible view to re-establishing cordial or friendly relations between the two churches after the Civil War.

Mr. Page: Let me interrupt: what two churches were those?

Dr. Taylor: The Northern Presbyterian Church or the Presbyterian Church in the United States of America and the Southern Presbyterian Church or the Presbyterian Church in the United States.

Mr. Page: All right, sir. Will you please continue with your explanation?

Dr. Taylor: And the—the two—the committees in negotiation between the two churches were seeking to establish relations between the two churches and the Southern Church was listing—the Southern Church was listing the reasons why it felt that impediments still existed to relations between the two churches, and one of the [220] impediments was the difference between the two churches in the matter of church property, in the philosophy of church property in the paragraph that was read yesterday from the Minutes.

Mr. Page: All right. Excuse me. Would you re-read that paragraph so that we can particularly identify for the jury the difference—the difference in the philosophies between the two churches, that is the Presbyterian Church, U. S. A. North, and the Presbyterian Church, U. S. South?

Dr. Taylor: I beg your pardon. It's the Minutes of 1875. I beg your pardon. This is a preliminary statement: "We now proceed to notice the second general cause preventing fraternal relations, namely: The course pursued in regard to Church property." And then this is the paragraph. "Without entering into a discussion, concerning the decision of the Supreme Court of the United States, in the case of the Walnut Street Church, Louisville, Kentucky, or how far the action of the General Assembly (North) of 1875 (sic), in approving the principles there laid down, was

inconsistent with the action of both the Old and New School Assemblies in approving precisely the opposite principle laid down by the courts of Pennsylvania, in [221] the controversy of 1837 and 1839, we here propose that this whole matter shall be submitted to arbitration on the principles presented in the paper adopted by the Old School Assembly of 1839, and of which, for convenient reference, as well as general information, a copy is here given, as follows:—"

Mr. Page: All right. Now, with that being the basis of the impediment or impairment between the re-affiliation, what then happened?

Dr. Taylor: Well, there were no resumption—at that time there were no resumption of fraternal relations between the two churches.

Mr. Page: Was that because of the difference in the philosophy of—regard to church property—between the two churches?

Dr. Taylor: This was one of the reasons.

Mr. Page: And what—and what, specifically, did this resolution that you've just quoted from, how was its philosophy expressing the U. S. Church South different from that of the U. S. A. Church North?

Dr. Taylor: Well, the U. S. A. Church North recognized the denominational claim over congregational property. The U. S. Church South did not recognize denominational [222] claim over property of a local congregation.

* * *

[225] *Dr. Taylor*: Well, the one we've just talked about was 1875. 1867 the General Assembly was in correspondence with the Synod of Kentucky which was writing to ask if it could be received into the Southern Presbyterian Church. The Synod of Kentucky was asking if its [226] philosophy of church property would be recognized by the Southern Church upon reception. The Southern Church

in its reply stated that it would—in the reply that was read—stated that it would recognize the Synod's ownership of its property and make no claims upon it upon reception into the Southern Church.

Mr. Page: What—was that action by the General Assembly of the Presbyterian Church, U. S. South?

Dr. Taylor: Yes.

Mr. Page: Now, Doctor, turning—we've covered the overture of the General Assembly 1949. Will you please refer to the Minutes of the General Assembly of 1951? . . . I hand you the Minutes of the General Assembly of the—of the General Assembly of the Presbyterian Church for the year 1951. These have been stipulated to be admitted in evidence by counsel. I also hand you the Minutes of 1953. Before we go into those Minutes, Doctor, do you happen to know of your own knowledge the, what we would call the legal citation of the case of Watson versus Jones, just for the record?

Dr. Taylor: I believe it's in the—

The Court: I think we can agree on—

[227] *Mr. Page*: I would be delighted to have it read to the jury.

Dr. Taylor: I have it written.

The Court: All right. Go ahead.

Dr. Taylor: It's in the United States Supreme Court Reporter, Law Edition 20.

Mr. Page: What page?

Dr. Taylor: Page 666.

* * *

[227] *Dr. Taylor*: This is a report which was adopted by the General Assembly: "As a result of our study and deliberation, we submit to the General Assembly the following five statements—" "Number 1. The legal title to property of a particular church is in its trustees on behalf

of that congregation. Therefore, the property is actually controlled by that congregation. This is recognized by both Civil and [228] Ecclesiastical courts. The right to hold and dispose of property is granted by the State. Number 2. A voluntary religious society which constitutes a part of a religious organization or denomination, having established tribunals authorized to decide questions of faith, discipline, rule, or ecclesiastical government, is bound by decisions of such tribunals in such questions. 3. In such cases where a right of property asserted in a civil court is dependent solely on a question of doctrinal discipline, ecclesiastical law, rule, or church government and that question has been decided by the highest tribunal within the organization, the civil courts will ordinarily accept that decision. 4. Where property is acquired by a particular church, by purchase or otherwise, for the use of such church, it will be a matter for the civil courts to determine who constitute such church or its legitimate successors. 5. If trustees or members of a particular church undertake to withdraw and attempt to take their church property with them, it may subject all questions of ownership and control to a decision by the civil courts."

* * *

[234] *Mr. Page*: What effect then did this action have—the removal of the—declaring the pastorate vacant—what was then the status of the congregation?

Dr. Taylor: Well, the paper states that individual Elders are removed and then it states since there is no Session—there is nothing in here which states that the Session was dissolved. As a matter of fact the paper states that one Elder is left in each congregation. There is nothing in the paper which goes on and takes action upon a congregation.

Mr. Page: What then was—what was the status of the congregation after the adoption of this Resolution?

Dr. Taylor: Well, the Administrative Commission stated that it would endeavor to continue supplying pastoral or ministerial oversight to the congregation.

Mr. Page: Did the effect of this Resolution, which you have just read, have—rather, did it have the effect of identifying the congregation as continuing?

[235] *Dr. Taylor:* This is an opinion.

Mr. Cheatham: I am going to object—

The Court: I sustain your objection.

Mr. Page: Was there any reference in the Resolution to dissolving the congregation or the church?

Dr. Taylor: No.

* * *

[241] *Mr. Page:* Yes. Doctor, is there any provision in the Book of Church Order of the Presbyterian Church in the United States, which provides for a Presbytery to hold property?

Dr. Taylor: Yes. A Presbytery can hold—you mean congregational property or—

Mr. Page: I mean congregational property.

Dr. Taylor: A presbytery can hold congregational property in the absence or non-existence of a congregation—if a congregation has ceased to exist, no longer exists, or for example, throughout rural areas sometimes there will be congregations or churches standing and the membership has moved elsewhere—there may be just one living member and he's off somewhere else. When the congregation ceases to—this is the only paragraph in the Book of Church Order with respect to property and we read it yesterday. When the church ceases to exist the Presbytery may take possession of this property.

Mr. Page: That is in the extinction of the congregation, so to speak?

Dr. Taylor: That's correct.

Mr. Page: Is there any—any other provision for a Presbytery [242] holding property where a congregation is in existence? A. No. There is no provision for a Presbytery to take. . . .

* * *

[244] *Mr. Page:* Doctor, relative to the matter of the ordination of women Elders and—would you tell the jury how this came about and also would you give the jury the historical position of the church in regard to this, this matter?

Dr. Taylor: Well, our denomination has always had the very highest respect and regard for its women members. As a matter of fact in a great many congregations the majority leadership is in its women and our denomination has never taken any action to demean in any way or to diminish in any way the respect and regard that it has for its ladies, shall I say. Denominations for most of its history, limited [245] the particular holding of the office of the ministry and of the eldership to the men of the denomination. The first time that an effort was made to change this policy with respect to office holding—and I don't think this has anything to do with opinion of qualifications of ladies, but the propriety of the office was in the 19th century and frequent overtures went to the General Assembly which were repeatedly defeated and in the last ten years overtures were approved by the General Assembly and then defeated by the Presbytery on very close votes, increasingly close votes. Finally in 1963—within a year or two, 1963, the General Assembly approved and the Presbyteries ratified the change in the constitution that would permit the ordination of women to ministry and to the eldership.

* * *

[258] *Mr. Cheatham:* That's what I wanted to bring out. Now, let's—it may be still a little bit confusing to the jury, not being Presbyterian—and it was for me, I will have to admit, for sometime, about the judicial structure of the Presbyterian Church. Will you quickly run through that again, starting at the lowest echelon which is the church Session, the local church.

Dr. Taylor: Well, these bodies are called courts for the reason that they are in some respects are true tribunals with authority to decide questions. The local court is the Session, composed of the Elders of the local church. The next Court which is the primary court of jurisdiction over local churches is the Presbytery.

Mr. Cheatham: Like in this case, the Savannah Presbytery?

Dr. Taylor: Savannah. There are four or five . . . . in each State, or six.

Mr. Cheatham: Go ahead.

[259] *Dr. Taylor:* This Presbytery is a court of original and primary jurisdiction over the local congregation and is the next court above the Session. Then there is a Synod which generally, with one exception, corresponds to the geography of the State, as the Synod of Georgia. And above that, the top court is called the General Assembly which has jurisdiction over all matters. The General Assembly is the only court that has authority to approach constitutional questions.

Mr. Cheatham: So that—

The Court: Let me ask you one question. Doctor Taylor, how many local congregations or local churches are there in the Savannah Presbytery? Do you know?

The Witness: I don't have that actual figure, sir. Actual Presbytery—

The Court: Well, when you speak of the Savannah Presbytery, you don't mean just the local churches in Savannah?

The Witness: No; about thirty—thirty-five—

Mr. Cheatham: Thirty-five, and they go down as far as Waycross, I believe, Fitzgerald and McRae and in surrounding counties.

The Witness: This is corresponded to a Diocese, I believe, or—roughly.

[260] *Mr. Cheatham*: And there are six Presbyterian—Presbyteries in Georgia—the State is divided into six parts. So, if any matter involving faith, or belief, or doctrine or decorum arises at the local church level and if there is dissatisfaction with the decision of the Session, there is a method of appealing, is that correct?

Dr. Taylor: That is correct.

Mr. Cheatham: First to the Presbytery?

Dr. Taylor: That's correct.

Mr. Cheatham: Then, if the losing party is not satisfied with the Presbytery's decision he can go to the Synod?

Dr. Taylor: Correct.

Mr. Cheatham: And then all the way on up to the General Assembly, just like . . . . Superior Court and cases can be appealed to the Supreme Court of Georgia?

Dr. Taylor: That's correct.

Mr. Cheatham: So in essence the Presbyterian Church has its own judicial system in some ways paralleling the civil appellate system?

Dr. Taylor: Correct.

Mr. Cheatham: Now, Doctor, we were talking about the amendment which I presume was done properly to allow women Elders and Ministers, I mean, was done within the rules [261] of Church Order. Nothing in that amendment is there, that forces a local congregation to elect a

lady as an Elder or a Minister if they don't want to do it, is there?

Dr. Taylor: A request came to the General Assembly two years ago asking if it was mandatory upon local congregations to place in nomination women for office and while the—the General Assembly replied that while it is not mandatory that local congregations elect women to office, it is mandatory that the privilege be accorded them to be placed in nomination.

Mr. Cheatham: Well, is there anything undemocratic about that?

Dr. Taylor: I have an opinion.

Mr. Cheatham: Go ahead and express it.

Dr. Taylor: I think it's perfectly democratic; yes, sir.

Mr. Cheatham: It follows the democratic procedure; if they want to elect a lady they can; if they don't, they don't have to. Is that correct? And if, under your procedure of nomination someone is nominated, a lady is nominated, then that's their privilege, isn't it?

Dr. Taylor: Well, you asked about mandatory. The privilege of nomination is mandatory. The election of them is not.

[262] *Mr. Cheatham*: Well, actually, I asked about election, but I'm glad you brought the whole thing out.

Mr. Cheatham: Thank you very much, Doctor.

* * *

Partial Testimony of L. R. Herman

[272] *Mr. Herman*: This is a Quarterly. It is for Older Youth. As I said before this is a Sunday School lesson that has been developed by the Presbyterian Church, U. S. to be used in their churches. The lesson is for May 24th, 1964; the same date as the lesson for [273] the adults. "Civil Disobedience. We are making history in our country and

as Christians we should be awake to that fact. The problems created by segregation or integration are not new; they are as old as the human race. In our country the problem is not new either, but in the past years we have all witnessed a new approach to that problem. For a century many have felt that the problem would solve itself as time went on; but we know now that hardly anything in human relations gets solved by itself. About some sickness in the body, or a broken leg, we rightly say; be patient and let nature take its course. But with human problems one can hardly say that; human nature is not dependable, and is quite as likely to go the wrong way as the right way. In fact, the Bible keeps on drumming away at the idea that it is more likely to go the wrong way than the right way. That is the first point we would like to make today; that good causes must be helped along, and we as Christians must not walk away from them. During the centuries people have used various methods of trying to get their problems solved; revolution, insurrection, immigration, strikes, shutdowns, sit-ins, [274] picket lines. Each of these has varied success in achieving results that were looked for. The phrase civil disobedience is something Gandhi has brought into our English language, and he says he got the idea from Jesus and the Sermon on the Mount. Today's reference to Luke 20 is of importance here. Jesus tells his questioner to give Caesar the things that are what —that are what Caesar thinks is his, but what really belongs to God. (sic) The disciples ignored established customs when they walked through the cornfields, plucked some corn and ate it; this was threshing in the judgment of the scribes, and was prohibited. Jesus violated the code of the Pharisees when he healed people on the Sabbath for the law at that time prohibited this. To help a sick man takes priority over the Sabbath laws; a moral law takes precedence over a civil law. You do not start a revolution;

you do not bring in tanks and set machines guns up in front of the mayor's residence to shoot him when he comes out. You quietly make your protest known, persistently you make it known. When asked about it you give your morally justifiable reasons for doing what you do. You appeal to God and his righteousness rather than [275] to the laws of the land. And you keep it until the laws of the land are changed to conform with what you believe is right. And if the law says you may not picket or gather peaceably for the purpose of protest, then you violate the law, appealing to a higher law to justify your actions. And, of course, you take the consequences."—"Taking the Consequences". This is the final part of the lesson for these young people in the Presbyterian churches, Sunday Schools. "There were some people in the early days of the church who were haled before the court because they would not sacrifice to the emporor. They believed emperor worship was idolatry, and that they could not affirm the Lordship of Christ and at the same time the lordship of the Emperor. Many Christians were martyred because of their stand in this matter. Peter says that they must not be surprised at that treatment, and they mustn't be ashamed of it. If they suffer because they have done wrong, that's what they can expect, and they shouldn't cry about it. But if they suffer for doing what was right and good, they must bear up under that too, and meanwhile commit their souls to a righteous Creator. This [276] is true today when anyone feels it his or her duty to engage in some form of protest as a matter of conscience. If the paddy wagon comes and takes you off to jail you will have to bear up under that experience. If you had done wrong it would be an indignity; but if you have not done wrong, then it need not embarrass you. I do not think a Christian should go out of his way in order to get arrested, seeking martyrdom so he can talk about it." This is a lesson pre-

sented, written and developed by the Presbyterian—this is a periodical prepared by the Presbyterian Church of the United States, 8 N. Sixth Street, Richmond, Virginia, and this is the Sunday School lesson for May 24th, 1964, developed for our young people and used in the church. We, at Hull Memorial Church have been unable to use this . . . because we believe that this is not according to the Confession of Faith of the Presbyterian Church.

Mr. Cowan: Is this material in conformity with the Confession of Faith?

Mr. Herman: In my—no, sir.

* * *

[291] *Cross-Examination by Mr. Cheatham*

Mr. Cheatham: Mr. Herman, at first you did not agree with some of the articles of the church literature so you cancelled your subscription; is that correct?

Mr. Herman: Yes, sir. We are now using Gospel Light publications which is a Presbyterian publication from Glendale, California.

Mr. Cheatham: The point is, you didn't like it so you stopped—

Mr. Herman: Yes, sir, we have the liberty to choose this.

Mr. Cheatham: That's exactly what I wanted to point out. Thank you very much.

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Partial Testimony of Mr. Frank L. Perry

[316] *Mr. Page*: Mr. Perry, has Eastern Heights Presbyterian Church or its Trustees ever received any money from the Presbytery or the Presbyterian Church in the United States to purchase either the property at 15-1507 37th Street, and Seiler Avenue property immediately to the rear of the church building?

Mr. Perry: Not one cent

Mr. Page: Has it ever received any money from the Presbytery or the Presbyterian Church in the United States to maintain, repair or pay any of the cost of expenses, not only for the two properties that you identified, the Seiler Street property and the church parsonage, but also on the church building?

[317] *Mr. Page*: How much is now owed, approximately, by the Eastern Heights Presbyterian Church and its Trustees on the church property?

Mr. Perry: I believe it's about eighty-five hundred dollars.

Mr. Page: Are all of the three properties mortgaged?

Mr. Perry: Yes, sir.

Mr. Page: In the payment off—in the payment off of the loan or paying off the loan, are you receiving or have you received any financial help from the Presbytery or the Presbyterian Church in the United States?

Mr. Perry: None whatsoever.

Mr. Page: Do either the Presbytery or the Presbyterian Church in the United States have one red penny or one thin dime invested in any of these properties?

Mr. Perry: No, sir.

* * *

[321] *Mr. Perry*: Before any business is transacted in a congregational meeting it is always determined by the congregation who shall vote and how they shall vote, and at this particular meeting it was recommended to the congregation by the Session that no members under thirteen years of age be permitted to vote and that was adopted by the congregation on this date.

Mr. Page: Was there any dissenting vote on that?

Mr. Perry: No, sir.

Mr. Page: Now, following the action determining who should vote, I hand you this Resolution—a photocopy—it's already in the pleadings—

Mr. Page: Would you mark that Plaintiff's Exhibit, Eastern Heights—?

Note: (Plaintiff's Exhibit, Eastern Heights, No. 15, Resolution, marked for identification.)

Mr. Page: This is already part of the pleadings and is being entered in evidence. I ask you—it's a photo-copy.

Note: (Plaintiff's Exhibit, Eastern Heights, No. 15, admitted in evidence.)

Mr. Page: Would you please identify that for me?

Mr. Perry: This is a Resolution adopted by the congregation of Eastern Heights Presbyterian Church on April the 17th.

Mr. Page: And where was it adopted—when was it adopted?

Mr. Perry: On April the 17th.

Mr. Page: And what was the vote on the adoption of that amendment?

Mr. Perry: One hundred and twenty-two against nothing.

Mr. Page: In other words, there was no dissenting vote?

Mr. Perry: No, sir.

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Partial Testimony of Mr. Clyde Pratt

[352] *Cross-Examination by Mr. Cowan*

Mr. Cowan: This will be very short—question I want to ask you, on cross-examination. Are you the Stated Clerk of the Savannah Presbytery?

Mr. Pratt: I am.

Mr. Cowan: And as the Stated Clerk you keep all records of the . . . of the Presbytery?

Mr. Pratt: I do.

Mr. Cowan: And you have access to all the records from the time the Presbytery was organized. Do you not?

Mr. Pratt: Either I do or they are in our historical foundation at . . .

Mr. Cowan: And you could get them if you want them?

[353] *Mr. Pratt:* Yes.

Mr. Cowan: Now, tell the jury, Mr. Pratt, from the records you have, the year 1890 up till the present time, has the Savannah Presbytery or the Presbyterian Church in the United States ever contributed one thin dime to Hull Memorial Presbyterian Church? One dime?

Mr. Pratt: I'm not prepared to answer that. I would have to—I didn't come prepared to answer that. I guess I could read the records and say "yes" or "no". I am unprepared to answer that question.

Mr. Cowan: Mr. Pratt, you answered it in the interrogatories we asked you, I think.

Mr. Pratt: What's that?

Mr. Cowan: I think you answered it in the interrogatories that we propounded to you.

Mr. Cheatham: The interrogatories were propounded to the defendant, and he is not a defendant.

Mr. Cowan: Mr. Pratt signed the paper.

The Court: Show him what you—

Mr. Cowan: Is this your signature, sir?

Mr. Pratt: I would call on the advice of the lawyer here to kind of help me out here. What is involved here?

Mr. Cheatham: Read what the interrogatory . . . states and we will put that in the record.

[354] *Mr. Cowan:* I'm asking him if this is his signature on these interrogatories?

Mr. Page: Oh, yes; it's my signature.

Mr. Cowan: And it's under oath?

Mr. Pratt: Yes, sir.

Mr. Cowan: Under oath and under the seal of a Notary. Is that right?

Mr. Cheatham: Give him the number you want him to—

Mr. Pratt: My question (sic) is as far as I know I have no record of it. Now, I—I couldn't swear whether we have or not. Now, if I have put my signature on something that I was supposed to swear to, I did it ignorantly.

Mr. Cheatham: . . . read the interrogatory and read the answer.

Mr. Cowan: I will.

Mr. Cowan: "Interrogatory Number 2. List all . . . whether Hull Memorial Church—Hull Memorial Presbyterian Church received directly or indirectly, financial support, gifts, loans, so forth from the Savannah Presbytery or the General Assembly of the Presbyterian Church in the United States. Attach copies of such actions or transactions." Your answer to 2: "such information is not available, nor is the same germane to the issues in the subject case [355] nor could it lead to admissible evidence. Interrogatory number 3. List all instances whether Savannah Presbytery and the Presbyterian Church in the United States contributed financially or otherwise in the purchase of any land now in the possession of or formerly in the possession of Mary Elizabeth Blue Hull Memorial Presbyterian Church." Your answer to number 3: "Records do not reveal that any contributions were made." Interrogatory number 4: "List all instances where the Savannah Presbytery and the Presbyterian Church in the United States through financial contributions or otherwise secured title in any manner, whatsoever, to any portion or all of any land now held or formerly held in possession of Mary Elizabeth Blue Hull Memorial Presbyterian Church." Your answer to number four, sir, "Records do not reveal that Savannah Presbytery and the Presbyterian Church of the United States has held title to the land in question." Interrogatory number 5: "List all instances where the Savannah Presbytery and the Presbyterian Church of the United States through financial contributions or otherwise,

contributed in the construction of any buildings of any kind now or formerly located on real property now or [356] formerly in possession of the Mary Elizabeth Blue Hull Memorial Church." Your answer to number 6: "Records do not reveal that such contributions were made." Interrogatory number 6: "List all instances where the Savannah Presbytery or Presbyterian Church of the United States through financial contributions or otherwise secured title in any manner, whatsoever, either partially or in whole, to any real property or any buildings of any kind constructed on any real property now or formerly in possession of Mary Elizabeth Blue Hull Memorial Presbyterian Church." Your answer to number 6: "Records do not reveal that such title was ever held by the Savannah Presbytery and the Presbyterian Church in the United States." Number 7—and we're about through. List all instances where the Savannah Presbytery and the Presbyterian Church of the United States through financial contributions or otherwise participated in whole or in part to the cost, including, but not limited to architect's fee, survey fees, . . . fees, or any other costs involved in the purchase of real property and construction of buildings thereon." Your answer to number 7, sir, "Records do not reveal that any such contributions were made." Now, one other [357] question I have to ask you, and I'll let you go.

Mr. Pratt: What is your question now? Maybe I can answer it.

Mr. Cowan: I'm going to ask it now. Interrogatory number 19, Mr. Pratt. "Is it the defendant's contention that the fact that these churches are not affiliated with the Savannah Presbytery or the Presbyterian Church in the United States, mean they are not recognized as a church of the Presbyterian denomination?" Now, what is your answer to that?

Mr. Pratt: Well, now, you've read a lot of questions there. Are you—

The Court: You want the answer to the last question?

Mr. Cowan: The last question.

Mr. Pratt: Now, I say, in all fairness, let's come back to the others.

Mr. Cowan: The others have to do with financial—

Mr. Pratt: I said the records did not indicate, and that doesn't mean that there might not be some record in Historical Foundation, but the records that I had access to did not indicate—

Mr. Cowan: Mr. Pratt, in the interrogatories I asked and these were propounded under oath, answered under oath, according to Georgia Code Section 38-1201, section, and this asked for information from the time that [358] this church was founded until the preesnt time and you were duty-bound in answering these under oath to give us the information we asked for and I think you gave it to us right here.

Mr. Pratt: I said the records did not show it.

Mr. Cheatham: (Inaudible)

Mr. Cowan: Number 19—do you want me to read it over?

Mr. Pratt: —

Mr. Cowan: 19. Is it the defendant's contention that the fact that these churches, Hull and Eastern Heights are not affiliated with the Savannah Presbytery or the Presbyterian Church in the United States mean they are not recognized as a church of the Presbyterian denomination.

Mr. Cheatham: Here he is asking for opinion evidence—

Mr. Cowan: I'm asking for—

Mr. Cheatham: Wait just a minute. Interrogatories . . . that can go far afield and what restrictions we have on us here in Court that—well, I object to that.

Mr. Cowan: Your Honor, he didn't object to the interrogatories. He answered the interrogatories. He has avail-

able all the—Book of Church Order, [359] all the laws of the church; he's the Stated Clerk of the Presbytery, the highest man next to the President of the Presbytery and he has this available information and he has answered it. Now, why is it—opinion—

The Court: I think . . . the last question, I think, calls for an opinion from this gentleman. He has got a perfect right to give his opinion to you in an interrogatory, but that doesn't make it admissible in evidence. The objection has been raised that that would call for an opinion and I am going to sustain the objection.

Mr. Cowan: You can come down.

* * *

Partial Testimony of Mr. J. Lehmon Brantley

[374] *Mr. Cheatham*: Then Read 4.

Mr. Brantley: 118-4. "Notice of Appeal or notice of Complaint, either by a party in the matter or by a member of the Commission, must be given within ten days from the date the Record is filed with the Clerk and must be given to both the Clerk of the court and to the Chairman of the Commission."

Mr. Cheatham: And has any Appeal been filed by any of these parties?

Mr. Brantley: No, sir.

Mr. Cheatham: All right, sir.

* * *

Partial Testimony of Dr. Ben Rose

* * *

[275] *Dr. Rose*: ". . . to the laws of the land. And you keep it until the laws of the land are changed to conform with what you believe is right. And if the law says you may not picket or gather peaceably for the purpose of pro-

test, then you violate the law, appealing to a higher law to justify your actions. And, of course, you take the conse— . . ."

* * *

[390] *Dr. Rose*: Your question again, please?

Mr. Page: You have stated that there is no provision in the Book of Church Order which provides that a local church can withdraw. I ask you if there is any provision in the Book of Church Order which says they cannot withdraw?

The Court: Not by implication.

Dr. Rose: There is no such provision; no, sir.

EXHIBITS

Portions of Minutes of the General Assembly of the Presbyterian Church in the United States for the Years 1839, 1867, 1875, 1951 and 1966

* * *

[425] § 184. *The Assembly will accede to an equitable division of funds.*

1839, p. 158. *Be it Resolved by the General Assembly of the Presbyterian Church in the United States of America,*

1. That this body considers itself and the Church at large bound, as both have been not only willing, but desirous, to adjust all claims against the corporate property of the Church, whether legal or equitable, in the most prompt, fair, and liberal manner.

2. That this is especially the case touching any claims which may exist on the part of the four Synods of Utica, Geneva, Genesee, and the Western Reserve, declared in 1837 to be no part of the Presbyterian Church, or on the part of those who seceded from the Church in 1838, or on the part of any body constituted out of the whole or any part of these elements. And that, in regard to all and each of these bodies and persons, the Assembly will faithfully adhere to any pledge or promise, express or implied, which it can justly be construed ever to have made, and will fulfil every expectation which it ever knowingly allowed to be cherished.

3. The Trustees of the Assembly are hereby authorized and requested to do, on the part of this Assembly, should occasion offer, whatever is lawful, competent, and equitable in the premises, conformable to the principles, and in the manner heretofore laid down in the Minutes of

this Assembly for 1837 and 1838, so far as relates to the corporate property of the Church, or any equities springing out of the same.

4. With reference to all Institutions, Corporations, Congregations, and other public persons or bodies in connection with us, but holding property for ecclesiastical purposes, or for religious and benevolent uses, which property is not subject to the control of the Assembly, although the said [426] persons, Institutions, or Congregations may be, in all such cases where difficulties relating to property have arisen or shall arise, in consequence of the long and painful disorders and divisions in our Church, we advise all our members and friends to act on the general principles heretofore laid down, and with the spirit of candour, forbearance, and equity which has dictated this Act.

5. The Assembly reiterates the declaration, that its chief desire, on all this part of our Church troubles, is to do even and ready justice to and between all persons and interests over which it has any control, or in regard to which it has any duty to perform.

* * *

[526]

MINUTES

OF THE

GENERAL ASSEMBLY

OF THE

PRESBYTERIAN CHURCH

IN THE

UNITED STATES,

WITH AN APPENDIX.

VOL. II.

A. D. 1867.

COLUMBIA, S. C.

PRINTED AT THE OFFICE OF THE SOUTHERN PRESBYTERIAN REVIEW.

1867.

PLAINTIFF'S EXHIBIT No. 16

(This is Front Cover: Entire booklet was admitted in evidence by stipulation)

[527] The report adopted by the Assembly is as follows:

The Committee to which was referred the Letter of the Synod of Kentucky, having given it a careful consideration, beg leave to submit the following report:

The letter contains a statement of the doctrines and principles for which this Synod and its Presbyteries have been contending for the last seven years, and lays this statement before the General Assembly as the basis of a covenant upon which this Synod may form an organic

union with us. It is, of course, not desired by this Synod that this paper should constitute any part of our doctrinal symbols or our written constitution, these being already established in such a form as the Assembly have, in other cases of union, either formed or proposed, distinctly declared its unwillingness to disturb. Nor is it desired, we presume, by the Synod, that the Assembly should enter into the controversies that have disturbed this body during the past seven years, or pronounce upon them in detail. The desire of the Synod, as we apprehend it, is the very natural and proper desire—to be assured that we are in such substantial agreement with them in the principles and doctrines for which they have been contending, that they will not be likely to have a recurrence of the difficulties from which they have already suffered so much. This agreement the Assembly can declare without any difficulty, since the whole existence of our Church as a separate organization has been an assertion of these principles, and a protest against those acts and doctrines that tend to subvert them. In the first official announcement, at Augusta, of our ecclesiastical existence, in the pastoral letter issued by the Assembly at Macon, and in the action of the last Assembly at Memphis, these great principles have been declared in the most solemn and emphatic manner, as among the fundamental principles of our ecclesiastical organization. And we have looked on the struggles of our brethren in Kentucky with a deeper sympathy and a livelier interest because we felt that they were contending substantially for the grand principles which have ever been the rallying cry of our Presbyterian ancestry in the best days of the Church's history—the supremacy of Christ's Crown and Covenant. And we are sure that should our brethren see fit to enter into organic relations with us, they will find that substantial agreement in all these great doctrines and principles which is necessary to a cordial and a happy

union. We therefore recommend the adoption of the following resolutions, viz.:

Resolved. 1. That this Assembly express its deep sympathy with our brethren in Kentucky in the troubles through which they have been passing during the last seven years, and its admiration of the firm stand which they have taken for the spiritual independence of the Church of Christ.

2. That this General Assembly declines now, as heretofore, to make any utterance concerning the acts of the body against which the Synod protests. Yet the Assembly feels free solemnly to assure the Synod of Kentucky not only of our cordial approval of, and sincere concurrence substantially in, the Synod's statement of doctrine and constitutional principles, as contained under the four heads of the third division of their letter, but of our sincere joy to find our brethren of Kentucky so ready to unite with us in solemn covenant, with a view, among other things, to the advancement and maintenance of these doctrines and principles as against the apparent Erastian tendencies of our American Protestantism.

3. This the Letter of the Synod of Kentucky be admitted to record, as they suggest, as a part of the historical acts and monuments of the Church, by publishing it in the Appendix to the Minutes of this Assembly.

4. That this Assembly cordially approves of the determination of the Synod of Kentucky, as expressed in the fourth resolution of its minutes of June 28th, 1867, communicated by its commissioners to this Assembly, to assert fully all its legal claims as a part of the "Presbyterian Church in the United States of America," and to reserve all its legal rights of property as a Synod in any union which may be formed with this body.

* * *

[669] II. CHURCH PROPERTY

BALTIMORE, *Jan. 11th*, 1875.

REV. SAMUEL J. NICOLLS, D. D., *Chairman:*

DEAR SIR: We now proceed to notice the second general cause preventing fraternal relations, namely: *The course pursued in regard to Church property.*

Most of the trouble in this matter is in the States of Missouri, Kentucky, and Tennessee, with individual cases elsewhere. The amount of property in dispute, or liable to it, has been estimated at not less than two millions of dollars. Some cases have been settled by arbitration. Other cases have been adjudicated in the civil courts, and the property adjudged sometimes to one side and sometimes to the other, not upon principles of equity, but upon legal technicalities. From the information received we are enabled to state that our people have, from the first, earnestly endeavored to settle the difficulty by compromise and arbitration, but in most instances it has been refused, and they have been harrassed with costly litigation, whereby have come increased heart-burnings and discussions, and no small reproach upon the Christian name.

This state of things cannot be contemplated with satisfaction by any who regard the peace of the Church, and "whatsoever things are lovely and of good report."

And now, without entering into a discussion concerning the decision of the Supreme Court of the United States, in the case of the Walnut Street Church, Louisville, Ky., or how far the action of the General Assembly (North) of 1872, in approving the principles there laid down, was inconsistent with the action of both the Old and New School Assemblies in approving precisely the opposite principle laid down by the courts of Pennsylvania, in the controversy

of 1837 and 1839 (see Church case in Baird's Digest), we here propose that this whole matter shall be submitted to arbitration on the principles presented in the paper adopted by the Old School Assembly of 1839, and of which, for convenient reference, as well as general information, a copy is here given, as follows (1839, p. 158):

Be it resolved, by the General Assembly of the Presbyterian Church in the United States of America:

[670] 1. That this body considers itself and the Church at large bound, as both have been not only willing, but desirous, to adjust all claims against the corporate property of the Church, whether legal or equitable, in the most prompt, fair, and liberal manner.

2. That this is especially the case touching any claims which may exist on the part of the four Synods of Utica, Geneva, Genesee, and the Western Reserve, declared in 1837 to be no part of the Presbyterian Church, or on the part of those who seceded from the Church in 1838, or on the part of any body constituted out of the whole or any part of these elements. And that, in regard to all and each of these bodies and persons, the Assembly will faithfully adhere to any pledge or promise, express or implied, which it can justly be construed ever to have made, and will fulfil every expectation which it ever knowingly allowed to be cherished.

3. The Trustees of the Assembly are hereby authorized and requested to do, on the part of this Assembly, should occasion offer, whatever is lawful, competent, and equitable in the premises, conformable to the principles, and in the manner heretofore laid down in the Minutes of this Assembly for 1837 and 1838, so far as relates to the corporate property of the Church, or any equities springing out of the same.

4. With reference to all Institutions, Corporations, Congregations, and other public persons or bodies in connection with us, but holding property for ecclesiastical purposes, or for religious and benevolent uses, which property is not subject to the control of the Assembly, although the said persons, Institutions, or Congregations may be, in all such cases where difficulties relating to property have arisen or shall arise, in consequence of the long and painful disorders and divisions in our Church, we advise all our members and friends to act on the general principles heretofore laid down, and with the spirit of candour, forbearance, and equity which has dictated this Act.

5. The Assembly reiterates the declaration, that its chief desire, in all this part of our Church troubles, is to do even and ready justice to and between all persons and interests over which it has any control, or in regard to which it has any duty to perform.—*Baird's Digest, p. 800.*

In accordance with the excellent Christian spirit of this paper, we propose that a plan shall be now arranged by which, so far as possible, all matters of church property that are in dispute, or that have not been adjudicated or otherwise settled satisfactorily to both parties, and all claims to property of any kind shall be settled by arbitration, upon principles of equity and fair dealing, as becometh Christians.

Should this proposal be such as you approve, we suggest that the details may be most satisfactorily arranged after an oral conference between the two committees.

By order of the Committee. Yours very truly,

WILLIAM BROWN.

* * *

[672] (1951) Each member of the committee was asked to make a study of the question and, if he desired, to submit a paper to the other members of the committee. Papers were submitted by five of the members of the committee.

The committee spent an entire day in discussion of that which was committed to it and the adoption of the report which is submitted, as follows:

That as a result of our study and deliberation, we submit to the General Assembly, the following five statements as our answer to the Assembly.

1. The legal title to property of a particular church is in its trustees on the behalf of that congregation. Therefore, the property is actually controlled by that congregation. This is recognized by the both Civil and Ecclesiastical courts. The right to hold and dispose of property is granted by the State.

2. A voluntary religious society which constitutes a religious organization or denomination, having established tribunals authorized to decide questions of faith, discipline, rule, or ecclesiastical government, is bound by decisions of such tribunals in such questions.

3. In such cases where a right of property asserted in a civil court is dependent solely on a question of doctrinal discipline, ecclesiastical law, rule, or church government and that question has been decided by the highest tribunal within the organization, the civil courts will ordinarily accept that decision.

4. Where property is acquired by a particular church, by purchase or otherwise, for the use of such church, it will be a matter for the civil courts to determine who constitute such church or its legitimate successors.

5. If trustees or members of a particular church undertake to withdraw and attempt to take their church property with them, it may subject all questions of ownership and control to a decision by the civil courts.

Respectfully submitted,

J. RUPERT MCGREGOR,
Chairman.

* * *

[724] (1966) 6. Declare itself (The U.S.A.) in favor of the phased withdrawal of all its troops and bases from the Vietnamese territory, if and when they can be replaced by adequate international peace-keeping forces, composed of military contingents capable of maintaining order while the peace settlement is being carried out.

7. Make available, through Congress, in fulfillment of the President's proposal, immediate reconstruction assistance and long-range economic development funds for South East Asia, including the several associated states of Indochina—this aid to be made available preferably through an effective international organization in which the beneficiary governments fully participate. In particular, the National Council of Churches requests that the United States Government take further appropriate actions through necessary Congressional and Executive measures to enable the United States to join the Asian Development Bank and to subscribe its full quota of capital.

In a world of revolution, rapid change and sharp conflict of ideologies, Christians have an opportunity and duty to be a reconciling and healing force between nations and peoples and races where possible.

The churches and voluntary agencies in the United States should prepare to expand greatly their services to

refugees and to those injured or affected by the war, and to play their full role in the gigantic task of reconstruction and reconciliation.

The General Board herewith endorses the following recommendations of the Division of Christian Life and Mission adopted October 8, 1965, for action by the National Council of Churches.

1. To continue and increase major, high-level dialogue between Asian and U.S. Christians in cooperation with the East Asia Christian Conference on the social, economic, and political questions affecting their respective countries.

2. To place in the crisis area of Asia a representative possessing political expertise as well as Christian understanding, to serve as a United States Christian presence in the area and to interpret Asian points of view to the churches in the United States of America.

3. To work directly and through the World Council of Churches on means for bringing about more meaningful and continuing relations with other churches across lines of political and cultural conflict. Looking to the future, the rebuilding of the Viet-Nam area calls for goals and programs big enough to enlist the support of all the people of Viet Nam. The task of reconciliation and the maintenance of peace calls for statesmanship of the highest order on the part of both churches and governments.

Respectfully submitted,

DR. FRANK B. DAVIS, *Chairman*

* * *

PORTIONS OF THE CHARGE OF THE SUPERIOR COURT OF CHATHAM COUNTY, GEORGIA

[698] I charge you further that regarding the congregational meetings of Eastern Heights and Hull Memorial on April 17th, 1966, it does not matter how many voted for or against the resolution of withdrawal. The fact that a majority or all members of one of the local churches may have voted to withdraw does not, of itself, give those members the right to take the church property with them. They must further show that the Presbyterian Church in the United States had previously abandoned its tenets and doctrines to the degree which I have previously charged you and only then will the majority vote of the local congregation to withdraw be valid.

[699] I charge you that when an individual becomes a member of a religious organization, his uniting with it is his voluntary act and he becomes bound by the rules and usages of the organization. A religious association usually adopts a constitution, by-laws and a form of government. A member, when he enters that organization, voluntarily assumes the duty of obeying the laws of the association. As to all matters fully ecclesiastical, he is bound by the decisions of the tribunal fixed by the organization to which he belongs as an arbiter to determine the disputed question relating to matters peculiarly within the province of the organization. In attempting to carry out the purpose for which the religious associations are formed, it becomes necessary in almost every instance, for the organization to hold and own property. The members of the organization, therefore, become interested in the property so owned. Differences may arise which bring about disputes as to what interest a member or a class of members of an organization may have in property. I charge you that Courts cannot become involved in questions pertaining to title or

right of possession of church property when that title or right of possession turns on ecclesiastical questions, such as the abandonment of doctrines and beliefs by the church organization. [700] Only when it can be shown that those in authority are attempting to carry the property along lines that are utterly variant from the purpose for which the organization was formed and that the governing authorities have substantially abandoned the tenets and doctrines of the original organization, can a Court have jurisdiction of ecclesiastical questions. As I stated, the burden is upon the plaintiffs in these cases to show that defendant, Presbyterian Church in the United States, which we will call the Southern Presbyterian Church, has attempted to carry the property of the plaintiff churches along lines that are utterly variant from the purpose for which the organization was formed, and that the governing authorities of the Southern Presbyterian Church has substantially abandoned the tenets and doctrines of the original organization.

I charge you further that if a religious organization has the power to change or amend its religious tenets and doctrines under its rules of procedure, then such amendments made within the rules of procedure cannot be questioned by civil courts or juries unless they amount to a substantial abandonment of the original tenets and doctrines so that the new tenets and doctrines are utterly variant from the purposes for which [701] the Church was founded.

I charge you that the Southern Presbyterian Church has the power to amend the Westminster Confession of Faith, which is a compilation of its tenets and doctrines under the rules of procedure. In the cases before you, as I have stated, the burden is upon the plaintiffs to show that the changes in the Westminster Confession of Faith were either not legally made, according to the Church's rules of procedure, or that the changes amount to a fundamental or substantial abandonment of the original tenets and doc-

trines of the Southern Presbyterian Church, so that the new tenets and doctrines are utterly variant from the purposes for which the Southern Presbyterian Church was founded.

* * *

[704] On the other hand, if you should find from the evidence in this case that the Presbyterian Church in the United States has violated its professed doctrine as outlined in the Confession of Faith and such violation amounts to a fundamental departure from the faith as it existed at the time of the original deeds the members of the respective plaintiffs could no longer accept and abide by the rulings and actions of the Presbyterian Church in the United States, and at the same time adhere to the Confession of Faith, then the plaintiffs upon leaving the denomination has the right to retain its own property.

If you find that the Presbyterian Church in the United States advocated and taught doctrines and teachings which are fundamental variations from the original doctrines, tenets, teachings of the Church, then you would be authorized to find in favor of the plaintiffs.

* * *

[705] I charge you further that both the local churches and the General Assembly must abide by the Confession of Faith understood at the time of its union. The congregations of the two local churches have a right to sever its connections with the Presbyterian Church in the United States if it so desires, without anyone's permission. In so doing, it cannot retain its property for the purpose of subjecting it to doctrines contrary to the Confession of Faith. If the Presbyterian Church in the United States substantially departs from the Confession of Faith, then the local churches not only have the right to withdraw but have the right to retain its property and to enjoin the defendant from interfering therewith.

* * *

[93] IN THE SUPERIOR COURT OF CHATHAM COUNTY, GEORGIA

MARY ELIZABETH BLUE HULL MEMORIAL PRESBYTERIAN CHURCH
VS
PRESBYTERIAN CHURCH IN THE UNITED STATES, ET AL

#5003

JUDGMENT

The jury impaneled to try the above styled cause of action having on December 1[illegible]h returned a verdict in behalf of the Plaintiffs and against the Defendants, a judgment is hereby rendered in behalf of the Plaintiffs and against the Defendants permanently enjoining and restraining said Defendants from trespassing upon the Plaintiffs' properties in any manner which would interfere with Plaintiffs' quiet and peaceful possession and use thereof.

This December 22, 1966.

/s/ Dunbar Harrison
Judge Superior Court, E.J.C.
of Georgia

[50] IN THE SUPERIOR COURT OF CHATHAM COUNTY, GEORGIA

EASTERN HEIGHTS PRESBYTERIAN CHURCH AND FRANK L. PERRY, SR., ET AL., AS TRUSTEES OF EASTERN HEIGHTS PRESBYTERIAN CHURCH

VS

PRESBYTERIAN CHURCH IN THE UNITED STATES, ET AL

#5005

JUDGMENT

The jury impaneled to try the above styled cause of action having on December 15th returned a verdict in behalf of the Plaintiffs and against the Defendants, a judgment is hereby rendered in behalf of the Plaintiffs and against the Defendants permanently enjoining and restraining said Defendants from trespassing upon the Plaintiffs' properties in any manner which would interfere with Plaintiffs' quiet and peaceful possession and use thereof.

This December 22, 1966.

/s/ Dunbar Harrison
Judge Superior Court, E.J.C.
of Georgia

[733] In the Supreme Court of Georgia

JAN 18 1968

24366. PRESBYTERIAN CHURCH IN THE UNITED STATES et al. v. EASTERN HEIGHTS PRESBYTERIAN CHURCH,

24367. PRESBYTERIAN CHURCH IN THE UNITED STATES et al. v. MARY ELIZABETH BLUE HULL MEMORIAL PRESBYTERIAN CHURCH,

1. Civil courts will, in a proper case, prevent diversion of church property from the doctrine or purpose to which it was originally devoted.

2. The degree of abandonment of, or departure from, original tenets of faith and practice by the general church which must be shown to afford such relief to the local churches is substantial, rather than complete or absolute.

3. The evidence presented an issue for the jury as to whether there was such a substantial abandonment or departure by the general church.

4. The above rulings are controlling adversely to the appellants upon all of their enumerations of error.

[734] GRICE, Justice. The issue here is whether two local Presbyterian churches, in withdrawing from the general organization, are entitled to the local church properties. It stems from claims by the local churches that the general church has abandoned the fundamental tenets of faith and practice existing when the local churches affiliated with it.

This litigation began on May 26, 1966, when Mary Elizabeth Blue Hull Memorial Presbyterian Church and Eastern Heights Presbyterian Church, incorporated non-

profit religious institutions located in Savannah, filed in the Superior Court of Chatham County petitions against the Presbyterian Church in the United States (herein referred to as "the general church") and the named chairman of the Administrative Commission of its Presbytery of Savannah. Each of the petitions sought injunctive relief against the general church organization interfering with the local churches' exclusive use and control of the local church properties. The defendants denied the material allegations of the petitions and sought affirmative equitable relief.

The two cases were tried together, resulting in verdicts and judgments in favor of the local churches.

The enumerations of error complain of the trial court's denial of motions to dismiss the petitions, for nonsuit and for directed [735] verdict, the admission of certain evidence, and also one portion of the charge to the jury.

The allegations of the petition of Eastern Heights and its trustees, insofar as necessary to recite here, are those which follow.

The congregation, on April 17, 1966, adopted a resolution, a copy of which was transmitted to the general church and its Savannah Presbytery. This resolution affirmed the congregation's religious faith and beliefs as originally adopted by the general church in 1861, declared that the general church had violated its constitution and departed from the faith and practice existing when Eastern Heights affiliated with it, and declared that Eastern Heights severed all connection with the general church and was henceforth an autonomous Presbyterian church. This resolution recited that the violations and departures of the general church from its original tenets of faith and practice included the following: ordaining of women as ministers and ruling elders, making pronouncements and recommenda-

tions concerning civil, economic, social and political matters, giving support to the removal of Bible reading and prayers by children in the public schools, adopting certain Sunday School literature and teaching neo-orthodoxy alien to the Confession of [736] Faith and Catechisms, as originally adopted by the general church, and causing all members to remain in the National Council of Churches of Christ and willingly accepting its leadership which advocated named practices, such as the subverting of parental authority, civil disobedience and intermeddling in civil affairs.

The petition alleged that the general church has also made pronouncements in matters involving international issues such as the Vietnam conflict and has disseminated publications denying the Holy Trinity and violating the moral and ethical standards of the faith.

It averred that all of the foregoing constitute a substantial, fundamental and radical departure from the faith and practice of the general church and have occurred since the affiliation of Eastern Heights with it in 1930.

The petition further recites that on May 19, 1966, an Administrative Commission of the general church's Presbytery of Savannah took certain action by a resolution which, in material part, recited as follows: The Presbytery had received letters from the named ministers of Eastern Heights and Hull Memorial in which each renounced the jurisdiction or authority over him of the general church and its Savannah Presbytery; that each had thus removed himself from office and membership in the general church and was no longer entitled to [737] perform with ordained authority any act in it; that by the resolutions of Eastern Heights and Hull Memorial of April 17, 1966, all elders of both churches, except one not contacted and another who dissented, had removed themselves from office and mem-

bership in the general church; that they no longer had any authority to exercise office derived from the general church; that since there was but one ruling elder in each of the two churches and one ruling elder does not constitute a Session so as to exercise jurisdiction over the two local churches, the Commission "will secure Ministerial leadership and provide regular services of worship in the sanctuaries of [the two churches] for those members who wish to continue their membership in and communion with [the general church], and will take such further action as shall be necessary in accordance with the Constitution of [the general church]."

The petition also averred that by such Administrative Commission action, the defendants threaten to trespass upon the property of Eastern Heights by assuming original jurisdiction over it, denying it the right to exercise authority over its affairs and imposing other ministerial leadership upon it for the purposes of holding regular worship services; that the removal of the regular minister and the imposition of another would disrupt the good order and peace [738] of its worship services; that the threatened acts of trespass would destroy the quiet and peaceful possession it now enjoys and would have a demoralizing effect upon it; that unless the threatened trespass is enjoined Eastern Heights will be irreparably damaged, the peaceful utility and enjoyment of its property will be adversely affected, and the dignity and sanctity of the church edifice will be intruded upon.

The plaintiffs declare that they are seeking to protect their faith and avoid one in conflict with that in existence when they affiliated with the general church, and that they should have title to the church property quieted and confirmed in them to preserve the trust. They allege that Eastern Heights is vested with title and ownership and now enjoys quiet and peaceful possession of described real property, conveyed to it or to trustees of it.

The prayers of the petition were for temporary and permanent injunction against the threatened acts of trespass hereinabove described and other relief.

The allegations of the petition of Hull Memorial are similar in substance to those of Eastern Heights. Those necessary to recite are as follows: that it owns described real estate, one portion of which was acquired in 1914 by deed reciting that it was to be used for a [739] place of worship by a church of the Presbyterian denomination known as the Mary Elizabeth Blue Hull Memorial Presbyterian Church; that it became affiliated with the general church in 1890; that no moneys have ever been contributed to it by the general church or by its Savannah Presbytery; that since it acquired its property the general church has made stated revoluntary, fundamental, unlawful, and radical diversion from the Presbyterian faith; and that in order to remain true to the Presbyterian doctrines and practices in force when it affiliated with the general church and acquired its property, it withdrew from the general church on April 17, 1966. The petition prayed for the same relief sought by Eastern Heights and in addition asked that title to the local church property be adjudged in it.

To each of these petitions the defendants interposed similar answers and cross bills which denied the material allegations. They made allegations which, insofar as necessary to relate here, follow. Prior to the adoption of their withdrawal resolutions the members and ruling elders of Eastern Heights and Hull Memorial were members of the general church, which is representative in form, and were subject to its constitution and laws. Because of such withdrawal by the two local churches the Administrative Commission took the action recounted in its resolution of May 19, 1966, referred to above. Its [740] decision was with full authority of the Savannah Presbytery, was made

known to the plaintiffs, but was not appealed from and therefore became final and binding on the parties and the court. The defendants have a right of possession to the properties but the plaintiffs have appropriated them to the use of the two local churches, in violation of law and the rules of the church. This constitutes a continuing trespass which must be enjoined or the defendants will be irreparably injured, and the peace and dignity of their right of possession of the properties for religious worship for those loyal to the general church will be impaired. Each answer and cross action prayed, among other matters, for injunctive relief against the local churches' appropriation of the local properties and for decree that the Savannah Presbytery of the general church has an implied trust over such properties as the rightful representative of the general church for the use and benefit of those members adhering to the doctrines and regulations of the general church.

Upon the trial the evidence took a broad range, both oral and documentary. The highlights of the history of the Presbyterian denomination were recited by theologians. They traced the beginning more than four hundred years ago, the spread of the movement to the American colonies in the eighteenth century, the establishment of [741] the Presbyterian Church in the United States of America, the withdrawal from it in 1861 by churches in the Southern portion of the United States, and the organization in Augusta, Georgia, of the defendant Presbyterian Church in the United States, sometimes referred to as "The Southern Presbyterian Church." They enumerated the bases of faith and practice of this organization when formed in 1861 as the Old and New Testaments of the Holy Bible, the Westminster Confession of Faith, and the Larger and Shorter Catechisms.

They stated that the constitution of the general church is composed of such Confession of Faith, the two Catechisms, the Book of Church Order, and the Directory of Worship. They explained that the government of the general church is representative or connective, and not congregational. They recited that the structure of this government, in ascending order, is as follows: the Session of each local church which is made up of its ruling elders; the Presbytery which is constituted of several Sessions in a geographical area; the Synod which is ordinarily composed of the Presbyteries within a state, and the General Assembly which is formed by representatives from the entire organization. They related that these Sessions, Presbyteries, Synods, and the General Assembly also constitute the judicial system of the church organization.

The evidence was that the constitution of the general church [742] contains no provision governing the situation here. There was considerable testimony as to whether the general church had over the years in various controversies recognized local ownership of church property. It was shown that the only provision in its constitution for a Presbytery to take local church property was when the congregation no longer existed.

Local witnesses recounted the origin and development of the two local churches.

Eastern Heights began as a mission of the Independent Presbyterian Church of Savannah. It was incorporated on December 6, 1930, and on the following day was commissioned by the Savannah Presbytery of the general church. At that time the Independent Church conveyed to Eastern Heights property to be used as a chapel, this deed naming as grantee "Eastern Heights Presbyterian Church, a religious corporation." Later two other tracts were acquired by it, each deed naming as grantees certain persons as

"Trustees of the Eastern Heights Presbyterian Church, and their successors in office." One of these deeds provided that the property was to be held in trust "for the use and benefit of the congregation of the Eastern Heights Presbyterian Church." At no time has the general church made any gift or loan to Eastern Heights.

[743] Hull Memorial was organized as an independent Presbyterian church and became affiliated with the general church in 1890. A portion of the property now in question was acquired in 1914; the deed named the Mary Elizabeth Blue Hull Memorial Presbyterian Church as grantee and recited that the property was to be used as and for a place of worship by a church of the Presbyterian denomination known as that named grantee. Later other property was acquired by it and these later deeds also named the Hull Memorial Church itself as grantee. Neither the general church nor its Savannah Presbytery has contributed any money to the purchase, buildings, operations, or maintenance of Hull Memorial.

Many documents were introduced in evidence. These included deeds, the withdrawal resolutions of the two local churches and the resolution showing the actions of the Administrative Commission above referred to.

Other documents pertained to the faith and practice of the general church when Eastern Heights and Hull Memorial affiliated with it and acquired the properties now in question. Many of these relate to actions which the two local churches cite as abandonment by the general church of its original tenets of faith and practice. These documents will be referred to later in this opinion.

[744] From the foregoing facts, we regard the controlling question to be this: Are local Presbyterian churches which withdrew from the general church, charging aban-

donment by the general church of the tenets of faith and practice existing when the local churches affiliated with it, entitled to maintain an action in the civil courts for the possession and use of the local church properties, legal title to which is in the local churches?

1. The appellants strongly urge that the petitions raise ecclesiastical questions which are exclusively within the jurisdiction of the church, not of the civil courts, and therefore that the plaintiffs cannot maintain this action.

In considering this contention we are mindful that "The traditional American doctrine of freedom of religion and separation of church and state carries with it freedom of the church from having its doctrines or beliefs defined, interpreted, or censored by civil courts." *Sapp* v. *Callaway*, 208 Ga. 805, 810-811 (69 S.E.2d 734).

But, at the same time, we also keep in mind that when property rights are involved civil courts will, in a proper case, protect them against wrongful diversion. Our *Code*, § 22-408, provides: "Courts are reluctant to interpose in questions affecting the management of the temporalities of a church; but when property is devoted [745] to a specific doctrine or purpose, the courts will prevent it from being diverted from the trust."

In this country the authorities are virtually unanimous in holding that because of the connective governmental structure of the Presbyterian Church, there is an implied trust upon the local church properties for the benefit of the general church. See in this connection, *Watson* v. *Jones*, 80 U. S. (13 Wall.) 679 (20 L.Ed. 666); *St. John's Presbytery* v. *Central Presbyterian Church of St. Petersburg*, (Fla.) 102 So.2d 714, 717; *Presbytery of the Everglades* v. *Morgan*, (Fla.) 125 So.2d 762. Furthermore, in

the trial of the present cases the court charged the jury that the local church properties in question were subject to an implied trust in favor of the general church, and no cross appeal was taken on this portion of the charge by the local churches. We take the view that such a trust is conditioned upon the general church's adherence to its tenets of faith and practice existing when the local church affiliated with it and that an abandonment of, or departure from, such tenets is a diversion from the trust, which the civil courts will prevent.

This court in *Mack* v. *Kime*, 129 Ga. 1 (2) (58 S.E. 184, 24 L.R.A. (N.S.) 675), held: "The general rule is that where property rights are involved, the civil courts will interfere to protect the members of an ecclesiastical organization who adhere to the tenets and doctrines which the [746] organization was organized to promulgate, and protect them in the right to use the property, as against those members of the organization who are attempting to divert the same to purposes utterly foreign . . ." See also, *Tucker* v. *Paulk*, 148 Ga. 228 (3) (96 S.E. 339), where this court approved the trial court's finding on whether the plaintiffs had "departed from the organization and doctrine of the church."

A different result is not required because of the rule that "Generally, the civil courts will look to the decisions of the constituted tribunals of a church in determining whether or not there may have been an abandonment of the faith, doctrines, practices, and decorum of a church." *Sapp* v. *Callaway*, 210 Ga. 277 (79 S.E.2d 532). Also, see *Mack* v. *Kime*, 129 Ga. 1, supra. Here, the Administrative Commission appointed by the Savannah Presbytery made no decision as to whether the general church had abandoned its original tenets of faith and practice. Furthermore, the local churches were not required to seek an ad-

judication of such issue within the framework of the general church because the diversions complained of had already occurred and the local churches had withdrawn and severed their connection with it.

The local churches charge abandonment of, or departure from, original tenets of faith and practice by the general church, and hence the civil courts will entertain the action.

[747] 2. Appellants contend that even if the civil courts will determine the question of abandonment of, or departure from, original tenets, the local churches must, under *Mack* v. *Kime*, 129 Ga. 1, supra, show absolute or complete abandonment in order to obtain relief.

The *Mack* case, in discussing the degree of abandonment or departure necessary to obtain protection, uses terminology such as "complete abandonment," "purposes utterly foreign," "entirely abandon," "utterly abandon," and "abandon altogether." We disagree. We do not believe that "complete" or like degree of abandonment or departure is necessary for relief. To the extent that *Mack* v. *Kime*, 129 Ga. 1, supra, requires such standard, it is expressly overruled.

The degree of abandonment or departure necessary to be shown to obtain protection in civil courts is that emphasized in the case at bar by the trial judge—substantial abandonment. "Substantial" is synonymous with "fundamental," "material," "vital," and "important," and is in keeping with the standard which is recognized in the following treatise statement: "No denomination, however, can exercise its share of control over a local congregation so as to require the property of the latter to be used for propagation of doctrines in conflict with the fundamental teachings of the denomination as accepted at the time the

local congregation united with the denomination. [748] The unlawful change of the constitution and confession of faith by the superior judicatory does not authorize a new use of its property by the individual church. In such case those who adhere to the original constitution and confession of faith are entitled to the use of the property." 76 CJS 849, Religious Societies, § 70. See also, 45 AmJur 771, Religious Societies, § 61; Annots., 24 L.R.A. (N.S.) 692, 8 A.L.R. 105, 70 A.L.R. 75.

To condition relief upon *complete* abandonment would impose upon the local churches the burden of showing that the general church had rejected each and every tenet of faith and practice existing when the local churches affiliated with it. For instance, suppose that this general church declared that it had abandoned as part of its tenets of faith and practice the entire New Testament. With that abandonment would go the existence of Jesus Christ, and the accounts of His birth, ministry, crucifixion, resurrection, and ascension into heaven. That would not be a "complete" abandonment of all the original tenets of faith and practice of that church. Yet even with the Old Testament, with all of its value, remaining, this would be an entirely different theology.

Therefore, we hold that upon a showing of substantial abandonment of, or departure from, the original tenets of faith and practice [749] by the general church, the civil courts will afford protection to the local churches as to possession and use of the local church properties, free of any claim by the general church.

It is significant that here the issue is between the local churches and the general church, not between two factions of a local church, as governed by *Code* § 22-406, which in material part provides that ". . . The withdrawal by one part of a congregation from the original body . . . is a re-

linquishment of all rights in the church abandoned." In this connection, we are familiar with some statements to the effect that the members of the local church who withdraw from the general church are not entitled to the property. See 45 AmJur 778, Religious Societies, § 68; 76 CJS 850, Religious Societies, § 71; *St. John's Presbytery* v. *Central Presbyterian Church of St. Petersburg*, (Fla.), 102 So.2d 714, supra, and citations. However, we know of no decision involving an issue between a local church and its general church, where a substantial abandonment of, or departure from, the original tenets of faith and practice by the general church is shown, which holds that in such situation the local church is not entitled to the use of its property. The cases relied upon by the appellants are thus distinguishable.

3. This brings us to the evidence and an evaluation of it in [750] the light of the requirement of *substantial* abandonment or departure.

The first of the actions cited by the two local churches is the declaration of the 1961 General Assembly of the general church that the doctrine of foreordination, as stated in the Confession of Faith, is not essential to Reformed theology. This, the local churches contend, violates the Westminster Confession of Faith and the Larger and Shorter Catechisms in stated particulars.

Likewise claimed as departure from original tenets of faith and practice is the position taken by the General Assembly in 1965 in refusing to endorse a proposal by a Presbytery to seek constitutional permission for voluntary Bible reading and prayer in the public schools.

Another contended departure related to involvement, through the National Council of Churches for Christ, in the Mississippi Delta Project, a civil rights movement sponsored by several organizations.

Complaint is also made of the action taken by the 1963 General Assembly authorizing the ordination of women as ministers and ruling elders. This, the local churches claim, violates designated portions of the Scriptures and the Book of Church Order.

Several actions taken by this highest authority of the general church are urged to have been improper involvements in civil affairs, [751] constituting an abandonment of original faith and practice.

One of the involvements thus complained of was a 1966 pronouncement on the Vietnam conflict. This pronouncement approved the policy statement which the National Council of Churches for Christ had announced in 1965. That statement, after expressing sentiments upon the situation, concluded with the recommendation that the United States: "Continue to reaffirm and manifest its readiness for unconditional discussion and negotiation in such manner as will remove any uncertainty about official policy relating to the termination of military action. Such reaffirmation might be strategically expressed by the cessation of all bombing of North Vietnam for a sufficient period to create more favorable circumstances for negotiations to begin and with a simultaneous effort to induce the North Vietnam government to stop sending military personnel and material into South Vietnam."

Another involvement in civil affairs complained of was endorsement by the General Assembly of the civil rights movement.

One of the strongest objections by the two local churches is directed at the position of the general church on the subject of civil disobedience. Advocacy of this, insofar as the evidence shows, began in the spring of 1964.

[752] The material for Sunday School teachers in "The Earnest Worker" for that period included a presentation entitled "The Rightful Claims of Government." After stressing obligations to both government and God, it declared that "these are times when the civil authority (or church authority, for that matter) must be disobeyed . . ." and stated that whether or not peace and quiet should be maintained in a community where there is injustice is a matter for each person to decide with his own conscience and what he believes will be pleasing to God.

The Sunday School Quarterly for Older Youth, the approximate age group of 12 to 15, for May 24, 1964, contained a statement on civil disobedience, which is quoted here in full:

"Civil Disobedience. We are making history in our country and as Christians we should be awake to that fact. The problems created by segregation or integration are not new; they are as old as the human race. In our country the problem is not new, either, but in these past years we are all witnessing a new approach to that problem. For a century many have felt that the problem would solve itself as time went on; but we know now that hardly anything in human relations gets solved all by itself. About some sickness in the body, or a broken leg, we [753] rightly say: be patient and let nature take its course. But with human problems one can hardly say that; human nature is not dependable, and is quite as likely to go the wrong way as the right way. In fact, the Bible keeps on drumming away at the idea that it is more likely to go that wrong way than the right way. That is the first point we should make today: that good causes must be helped along, and we Christians must not walk away from them.

"During the centuries people have used various methods of trying to get their problems solved: revolution, insurrection, immigration, strikes, shutdowns, sit-ins, picket lines. Each of these has had varied success in achieving results that were looked for. The phrase *civil disobedience* is something Gandhi has brought into our English language, and he says he got the idea from Jesus and the Sermon on the Mount. Today's reference to Luke 20 is of importance here. Jesus tells his questioner to give to Caesar the things that are Caesar's, but to God the things that are God's. This not only means that I pay my legitimate taxes to Caesar, and go to church on Sunday and put something into the offering plate for God. It is not quite as simple as that. It may also mean that I *withhold* from Caesar what Caesar thinks is his, but what really belongs to God!

"The disciples ignored established customs when they walked [754] through the cornfields, plucked some corn and ate it; this was threshing in the judgment of the scribes, and was prohibited. Jesus violated the code of the Pharisees when He healed people on the Sabbath for the law at that time prohibited this. To help a sick man takes priority over the Sabbath laws; a moral law takes precedence over a civil law. You do not start a revolution; you do not bring in tanks and set machine guns up in front of the mayor's residence to shoot him when he comes out. You quietly make your protest known, persistently you make it known. When asked about it you give your morally justifiable reasons for doing what you do. You appeal to God and his righteousness rather than to the laws of the land. And you keep at it until the laws of the land are changed to conform to what you believe is right. And if the law says you may not picket or gather peaceably for purposes of protest, then you violate the law, appealing to a higher law to justify your actions. And, of course, you take the consequences.

"Taking the Consequences. There were some people in the early days of the church who were haled before the court because they would not sacrifice to the emperor. They believed emperor worship was idolatry, and that they could not affirm the Lordship of Christ and at the same time the [755] lordship of the emperor. Many Christians were martyred because of their stand in this matter. Peter says that they must not be surprised at that treatment, and they mustn't be ashamed of it. If they suffer because they have done wrong, that's what they can expect, and they shouldn't cry about it. But if they suffer for doing what was right and good, they must bear up under that too, and meanwhile commit their souls to a righteous Creator.

"This is true today when anyone feels it his or her duty to engage in some form of protest as a matter of conscience. If the paddy wagon comes and takes you off to jail you will have to bear up under that experience. If you had done wrong it would be an indignity; but if you have not done wrong, then it need not embarrass you. I do not think a Christian should go out of his way in order to get arrested, seeking martyrdom so he can talk about it."

In April 1965, the General Assembly, as shown by its minutes, went on record with a pronouncement entitled "Civil Disobedience: The Christian and the State." It is as follows:

"This brings us to the problem of civil disobedience: the open, non-violent and conscientious refusal to obey a law or laws, as a means of appeal to a higher law, combined with the willing acceptance of the penalty. It is an extreme demonstration of dissatisfaction with some aspect of society. It also presents in its [756] purest form the problem of the relation of the Christian to the state.

"Paul, and the Confession of Faith as well, affirm that governments are instituted by God and should therefore

be obeyed. However, the civil magistrates are also bound under their charge:

"'To protect the person and good name of all their people in such an effectual manner as that no persons be suffered, either upon pretense of religion or infidelity, to offer any indignity, violence, abuse or injury to any other person whatsoever.' (Westminster Confession, XXV, 3).

"It needs no elaboration that within the province of our church, we have often kept silent, though men, because of race, have suffered 'indignity, violence, abuse, and injury.'

"It is true that within our system of government, means are provided, through the law, to present and adjudicate grievances for such injustices. Yet, when due course of civil law is denied or abridged, the Christian, for whom 'God alone is Lord of Conscience,' may validly appeal to the Higher Law, led by the inner witness of the Holy Spirit, speaking in and through the scriptures. This great ordering Word may lead him against the world, against the establishment of the civil magistrates. But he should be very cautious about [757] taking such a lonely position and should hold it only in fear and trembling. If it leads him into civil disobedience, he should not try to justify his position before men. He has violated the law, the public standard of justice, and hence must recognize his liability to the judgment of the civil court.

"The church exists to unite men by God's grace with themselves, with God, and with their fellows—to make them whole. Therefore, it should give the support of Christian compassion to any member who, following his conscience in obedience to the Word, engages in civil disobedience.

"The methods of achieving justice which have been delineated here, while accomplishing in varying measures this end, cannot, in fact, bring to fruition our desire for unity in the bond of peace. Therefore, we as Christians are called upon to look beyond these methods to work toward the reconciliation of all parties involved by encouraging dialogue in the spirit of Christian love."

A year later the 1966 General Assembly, in answering a number of overtures seeking its action on the above declaration, acknowledged "the unrest and disturbance within parts of the church" as a result of the declaration. However, it reaffirmed that statement and attempted to clarify its "spirit and intent," concluding with [758] the following summation:

"The Presbyterian Church, U. S., desires at this time to reaffirm the obligation of all her obedient sons and daughters: (1) To live responsibly under the law of the land; (2) To use personal influence and ballot to enhance the rule of law so that injustice may be replaced with justice, and the full provisions of the law for justice, protection, and liberty may be enjoyed by every citizen of every community; (3) To regard civil disobedience as a measure of last resort to be employed only in circumstances of otherwise irremediable deed, and in the exercise of which the whole concept of law is not denied, but affirmed; and (4) To continue to support and regard with compassion those who practice civil disobedience when no legal recourse has been left open to them and who act in Christian conscience and allegiance to Almighty God."

These actions, positions and pronouncements by the general church, the local churches insist, violate fundamental faith and doctrines established long ago. They call attention to the Westminster Confession of Faith, which

provides "Synods and councils are to handle or conclude nothing but that which is ecclesiastical: and are not to intermeddle with civil affairs which concern the commonwealth unless by way of humble petition in cases extraordinary; or by way of [759] advice for satisfaction of conscience, if they be thereunto required by the civil magistrate," (Ch. XXXIII, par. 4), and "It is the duty of the people to pray for magistrates, to honor their persons, to pay them tribute and other dues, to obey their lawful commands, and to be subject to their authority, for conscience' sake. Infidelity, or difference in religion, doth not make void the magistrate's just and legal authority, nor free the people from their due obedience to him; from which ecclesiastical persons are not exempted . . ." (Ch. XXV, par 4). They also stress the applicability of certain provisions of the Book of Church Order, to wit: "The power which Christ has given his Church is wholly moral and spiritual, and constitutes the Church a kingdom and government distinct from the civil commonwealth . . ." (Ch. 1, § 1-2).

All these actions cannot be brushed aside as trivial and inconsequential. The General Assembly's declaration that foreordination was no longer necessary for Reformed theology was contrary to one of the basic tenets which has made Presbyterianism significantly different from other denominations. The General Assembly's endorsement of civil disobedience, which would allow a citizen to decide whether or not he will obey the law, is a radical venture into civil affairs. It is absolute defiance of law and order, and is the road to anarchy. [760] Also, the General Assembly's recommendations as to what steps should be taken to secure peace in Vietnam is an entry into diplomatic and military matters beyond the church's function as delineated by its Westminster Confession of Faith and Book of Church Order.

These matters constituted a course of conduct by the highest level of the general church's government for a period continuing into 1966 when the withdrawal resolutions were adopted by the local churches and the instant suits were filed. None of these departures existed when these two local churches affiliated with the general church.

As we appraise it, the foregoing evidence presented an issue for the jury to decide, whether the totality of actions of the general church amounted to a substantial abandonment of, or departure from, the original tenets of faith and practice by the general church. The jury found that they did.

4. The above rulings are controlling upon all of the enumerations of error made here.

(a) Under the rulings in Divisions 1 and 2, the trial court properly refused to grant appellants' oral motion to dismiss the petitions, asserting that the allegations concerning abandonment or departure from faith and doctrine are ecclesiastical questions exclusively within the jurisdiction of the church rather than the [761] civil courts, and even if the courts are allowed to determine such question the plaintiffs have not shown absolute abandonment.

(b) The admission of testimony concerning departure from faith and doctrine by two of the appellees' witnesses was proper in view of the ruling in Division 1.

(c) Denial of the appellants' motions for nonsuit, based upon the ground that the appellees' admissible evidence was insufficient to sustain their actions as pleaded, and for directed verdict, upon the ground that there was no conflict in the evidence and it was shown that all ecclesiastical questions involved rested exclusively with the church, was proper under the rulings made in Divisions 1 and 3.

(d) In view of the ruling in Division 2, the trial court properly charged the jury on "substantial", rather than "absolute," as the degree or standard of abandonment of faith and doctrine by the general church they must find in order to give relief to the appellees.

We find no error in the matters enumerated as error. The judgments are therefore

Affirmed. All the Justices concur.

[763] SUPREME COURT OF GEORGIA

Atlanta, January 18, 1968

The Honorable Supreme Court met pursuant to adjournment.

The following judgment was rendered:

Presbyterian Church in the United States et al. v. Eastern Heights Presbyterian Church.

This case came before this court upon an appeal from the Superior Court of Chatham County; and, after argument had, it is considered and adjudged that the judgment of the court below be affirmed. All the Justices concur.

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[765] IN THE SUPREME COURT OF GEORGIA

PRESBYTERIAN CHURCH IN THE UNITED STATES, ET AL. VS. EASTERN HEIGHTS PRESBYTERIAN CHURCH	Case Number 24366
PRESBYTERIAN CHURCH IN THE UNITED STATES, ET AL. VS. MARY ELIZABETH BLUE HULL MEMORIAL PRESBYTERIAN CHURCH	Case Number 24367

[766] **MOTION FOR REHEARING**

NOW COME, Appellants in the above stated case and within the time allowed by law move for a rehearing and reversal of the decision rendered by this Court on January 18, 1968. The decision of the Court herein was contrary to the contentions of Appellants, and they respectfully show to the Court that in rendering said decision the Court overlooked certain material facts in the record and certain decisions, statutes, and a provision of the Constitution of the United States of America, which are controlling as authority and which require a different judgment from that rendered; and further that the Court erroneously construed or misapplied certain provisions of law and certain controlling authorities hereinafter set forth.

PRELIMINARY STATEMENT

The decision of the Court reverses long standing case law in the State of Georgia which conformed with the First and Fourteenth Amendments to the Constitution of the United States as expressed in United States Supreme Court cases hereinafter cited. The Court's decision will have a disastrous effect on all Protestant churches in Georgia,

whether connectional such as the Presbyterian Church or congregational such as the Baptist Church. It will end the separation of Church and State, a cornerstone of American liberty.

If the Court's decision stands, any member of any Protestant church can create a jury issue out of any action of the Church in perfecting or explaining or acting upon its doctrine, simply by alleging that the action of the church [767] amounts to a substantial departure from what the church believed when he first became a member, and if the jury agrees with the disgruntled member of the church, the property can be delivered to his possession.

The effect of the decision is to destroy the free exercise of religion by religious bodies in Georgia and to impose the supervisory power of the Court on all actions of the Church that any member feels might constitute a substantial departure from the faith and doctrine of the church.

Appellants submit that not only is the Court's decision in error as to the law but that the practical application of its new standard of "substantial" deviation is incapable of definition that would be understood by a jury on a uniform basis. It reduces the question of what a church believes and whether or not it has substantially deviated from those beliefs, to the opinion of a jury of twelve citizens who at best are ill-prepared to decide the same.

When the judicial arm of the State, such as a jury, is allowed to decide such totally ecclesiastical matters, the separation between Church and State is destroyed. As Mr. Justice Black said in *Everson* v. *Board of Education*, 330 U.S. 1 (1947), at page 16:

> "Neither a state nor the Federal Government can, openly or secretly, participate in the affairs of any religious organizations or groups and *vice versa*. In the

words of Jefferson, the clause against establishment of religion by law was intended to erect 'a wall of separation between Church and State'." [Citation omitted].

[768] To allow the State, through its judiciary, to enter into church disputes is to violate the freedom of religion clause of the First Amendment (made applicable to the states by the Fourteenth Amendment) by taking from the church its constitutional right to decide purely ecclesiastical matters and giving that right to the courts. Surely no such result was intended by the framers of the First Amendment.

GROUNDS FOR REHEARING

1. The judgment of this Court which specifically overrules its older case of *Mack* v. *Kime*, 129 Ga. 1 (58 S.E. 184), which older case had adopted the interpretation by the Supreme Court of the United States of the First and Fourteenth Amendments to the Constitution of the United States as stated in *Watson* v. *Jones*, 80 U.S. 679, contravened the First and Fourteenth Amendments to the Constitution of the United States in that it denied to Appellants their right to free exercise of religion. Prior to this decision under the Georgia doctrine of stare decisis set forth in Ga. Code Section 6-1611, Appellants had a right to expect that the interpretation of the First Amendment to the Constitution of the United States by the Supreme Court of the United States would be applied by the Supreme Court of the State of Georgia in considering this case, as stated in *Watson* v. *Jones*, supra. By overruling *Mack* v. *Kime*, supra, this Court has denied Appellants the equal protection of the laws and the free exercise of religion guaranteed to them by the First and Fourteenth Amendments to the Constitution of the United States by refusing to apply to the

facts of this case the United States Supreme Court's interpretation of the First and Fourteenth Amendments of the Constitution.

[769] 2. The relief sought by the plaintiffs in the Court below would contravene the First and Fourteenth Amendments to the Constitution of the United States of America as interpreted by the United States Supreme Court in *Watson* v. *Jones*, 80 U.S. 679 and *Kreshik* v. *St. Nicholas Cathedral*, 363 U.S. 190, in that Appellees ask the State of Georgia, acting through its judiciary, to interfere with the free exercise of religion and deny the separation of Church and State, in that the Appellees ask the Superior Court of Chatham County, Georgia to prevent the free functioning of the ecclesiastical government of the Presbyterian Church in the United States.

The case of *Kreshik* v. *St. Nicholas Cathedral, supra*, involved a dispute between the Russian Mother Church and its American offspring over the right to use and occupy St. Nicholas Cathedral in New York City. The matter first reached the United States Supreme Court in *Kedroff* v. *St. Nicholas Cathedral of the Russian Orthodox Church of North America*, 344 U.S. 94.

It was clear that prior to the Bolshevik Revolution the Russian Orthodox Church was an hierarchial church with unquestioned paramount jurisdiction in the governing body in Russia over the American branch of the church. A New York State Legislature undertook to transfer the control of the New York churches of the Russian Orthodox religion from the Patriarch in Moscow to the governing authorities of the Russian Church in America. The United States Supreme Court struck down New York State's attempt to deliver possession of the Cathedral to the American branch of the church.

[770] After the case was reversed the New York Court of Appeals ordered a retrial of the question of the right of the American branch of the church to the use and occupancy of the cathedral on a common law issue. After the trial the New York Court of Appeals directed the entry of judgment against the Patriarch in Moscow holding that by reason of the domination—found by that Court to be the fact—of the Patriarch by the secular authority of U.S.S.R., his appointees could not under the common law of New York validly exercise the right to occupy the cathedral. The United States Supreme Court held that it made no difference that the State in the *Kreshik* case acted solely through its judicial branch, for whether legislative or judicial, it was still the application of State power and thus the judicial principles ruled on in the *Kedroff* dispute forbid the judiciary as well as the legislature of a state to interfere with the free exercise of religion.

In the *Kedroff* case Mr. Justice Reed, speaking of the New York law under consideration, said, beginning at page 119:

> "It passes the control of matters strictly ecclesiastical from one church authority to another. It thus intrudes for the benefit of one segment of a church the power of the State into the forbidden area of religious freedom contrary to the principles of the First Amendment . . .
>
> "Ours is a government which by the 'law of its being' allows no statute, State or national, that prohibits the free exercise [771] of religion. There are occasions when civil courts must draw lines between the responsibilities of Church and State for the disposition or use of property. Even in those cases when the property right follows as an incident from decisions of the church custom or law or ecclesiastical issues, the church rule controls. This under our Constitution necessarily follows in order that there may be free exercise of religion."

Although the Court in *Kedroff* was considering a state law, which is not involved in the present case, the *Kreshik* case made this reasoning equally applicable to judicial action. The result is that a state cannot, either through its legislative *or* judicial branches, decide purely ecclesiastical matters.

3. The judgment of the Superior Court of Chatham County contravenes the First and Fourteenth Amendments to the Constitution of the United States of America as interpreted by the United States Supreme Court in *Watson* v. *Jones*, 80 U.S. 679, and *Kreshik* v. *St. Nicholas Cathedral*, 363 U.S. 190, in that the State of Georgia, acting through its judiciary, has interfered with the free exercise of religion and denied the separation of Church and State in that the Court prevents the free functioning of the ecclesiastical government of the Presbyterian Church in the United States.

4. The relief afforded Appellees by the Court below contravenes the First and Fourteenth Amendments to the Constitution of the United States of America as interpreted by [772] the United States Supreme Court in *Watson* v. *Jones*, 80 U.S. 679, and *Kreshik* v. *St. Nicholas Cathedral*, 363 U.S. 190, in that the State of Georgia, acting through its judiciary, has interfered with the free exercise of religion and denied the separation of Church and State, in that the permanent injunction issued by the Superior Court of Chatham County, Georgia prevents the free functioning of the ecclesiastical government of the Presbyterian Church in the United States.

5. The judgment of this Court which affirms the judgment of Chatham Superior Court contravenes the First and Fourteenth Amendments to the Constitution of the United States of America as interpreted by the Supreme Court in *Watson* v. *Jones*, 80 U.S. 190, in that the

State of Georgia, acting through its judiciary, has interfered with the free exercise of religion and denied the separation of Church and State and prevents the free functioning of the ecclesiastical government of the Presbyterian Church in the United States.

6. The Court erred in the first division of its Decision by holding that the actions of the General Church constituted a diversion of the church property from the doctrine or purpose to which it was originally devoted, for the following reasons:

(a) None of the actions of the General Church complained of by Appellees in any way affected or diverted the local church properties of Appellee churches. The actions of the General Church merely constituted an expression of the opinion of the General Assembly or the Commission of the church involved and were in no way binding upon local church members or the use of local church properties.

[773] For example, the Amendment allowing the election of women elders did not require the local churches to do so but only allowed them to elect women elders if a majority of the local congregations so desired.

(b) The Court erred in applying Georgia Code 22-408 (page 11 of the Decision) to the facts in this case because the facts do not in any instance show that the properties involved have been diverted by any action of the General Church. The said Code section is a direct outgrowth of *Bates* v. *Houston*, 66 Ga. 198, 202, which involved a congregational church and in which the property was being directly affected by the actions complained of.

If the activities of the General Church had been such that the use of the local church properties or the worship required in the local church properties had been substan-

tially changed then the reasoning advanced by the Court might be more tenable. But this is not the case. The local churches were not required to elect women elders, they were not required to change their beliefs on preordination, they were not required to buy the literature with which they were dissatisfied, and they certainly were not required to become involved in the civil rights activities of the church.

At no time were the local properties diverted from the trust.

(c) The Court erred in apparently attempting to distinguish *Sapp* v. *Calloway*, 210 Ga. 277 (79 S.E.2d 532), on page 13 of the Decision, by citing the part of the Sapp case which requires courts to adhere to the decisions of constituted tribunals within the church and then stating that the Administrative Commission appointed by the Savannah Presbytery made no decision on abandonment of tenets or faith.

[774] If the *Sapp* case is good law, and we believe it is excellent law as laid down by this Court in a full bench decision, then the actions of the General Assembly, being the highest tribunal within the church, are controlling upon the Court. Therefore, the activities of the General Assembly about which Appellees complain, are binding upon the civil courts provided that these actions were taken under the constituted by-laws and constitution of the General Church. There is no contention that these actions were outside the procedural laws of the church.

The *Sapp* case is actually at odds with the part of this Court's Decision which would allow a jury to consider ecclesiastical questions and although this Court overruled a portion of *Mack* v. *Kime*, supra, it has not overruled *Sapp* v. *Calloway*, supra, which remains controlling case law in Georgia.

That portion of *Sapp* v. *Calloway, et al.*, which states: "The Church acting through a majority of its members, settled this issue of doctrine and faith, viz., that a labor union was an oath bound secret society. Whether good or bad, true or false, neither the Court nor jury had a right to pass on the question of whether or not a labor union is an oath-bound secret society or not. Following the settled principles of law, the Courts of this State and of the United States, have consistently adhered to the sound and salutary rule that civil courts have no power or authority to interfere in the internal affairs of a religious organization concerning doctrines of faith or belief. *Stewart* v. *Jarriel*, 206 Ga. 855. The traditional American doctrine of freedom of religion and separation of Church and State carries with it freedom of the church from having its doctrines and beliefs defined, interpreted, or censored by civil courts" is contrary to the Decision in this case.

[775] (d) That portion of the Decision on page 13 which reads, "furthermore, the local churches were not required to seek an adjudication of such issue within the framework of the General Church because the diversions complained of had already occurred and the local churches had withdrawn and severed their connection with it." is an erroneous application of the general law and the laws of the Presbyterian Church because it would not require a person aggrieved of a decision of a lower judicatory within the church structure to appeal it to the higher judicatories prior to taking the matter to the civil courts. Until such time as it can be shown that the persons withdrawing from the General Church and appropriating the local properties, have exhausted their remedies within the church structure, they have no right to apply to the civil courts for redress. 76 C.J.S. Section 86, page 878. "It is generally held that a member, minister, or officer of a church aggrieved by a church decision or action must exhaust his

remedies within the church before he may resort to the courts for relief, but this rule is inapplicable where there is no higher church body from whom redress may be obtained."

Appellees did not attempt to have the General Assembly reverse its actions or activities by appealing either through the lower judicatories or directly to the General Assembly, but they took it upon themselves to pass judgment on the actions of the General Church and use this as their basis for withdrawal. The Court's decision now has the effect of destroying the appellate procedure within the church structure and allows a disgruntled person to take a grievance directly to the civil courts at any stage he desires.

[776] 7. The Court has erred in reversing that portion of *Mack* v. *Kime*, supra, which requires absolute abandonment before a civil court can become involved and in substituting "substantial abandonment", not only for the constitutional reasons hereinbefore cited in this motion but because the standard of "substantial abandonment" is incapable of a definition that can be understood on a uniform basis by any jury. What is substantial to one person may not be to another. It is also impossible for a person in determining whether or not an act is substantial to divorce from his mind his personal prejudices regarding the same.

This is probably one of the fundamental reasons why the Supreme Court of Georgia in *Mack* v. *Kime*, supra, and the Supreme Court of the United States in *Watson* v. *Jones*, 80 U.S. 679, have refused to allow the courts to intrude in religious affairs.

The effect of the new rule laid down by this Court is to make a jury question of any issue involving church doctrine or application of that doctrine and to require the jury to determine first what the church believes and

secondly whether there has been a substantial deviation from those beliefs. How is it possible for a jury of twelve persons to enter the often confusing quagmire of church doctrine, the vagueness of which probably brought the matter to Court in the first place, and exercise a judgment that would be superior to that of the church tribunals? There is no way, without destroying the doctrine of separation of Church and State in the process.

(e) The citation from 76 C.J.S. 849, on pages 14 and 15 of the Decision again emphasizes what has been argued previously in this motion. The citation refers to the situation where a local congregation is required to use the [777] local property for the propagation of doctrines in conflict with the fundamental teachings of the denomination. Without repeating the argument hereinbefore cited, the actions taken by the General Church of which Appellees complain, do not in any instance ". . . require the property . . ." (76 C.J.S. 849) to be used for the propagation of doctrines in conflict with what the local congregation feels are the fundamental teachings of the denomination.

For the above reason, it is respectfully submitted that the citation submitted from C.J.S. in support of the contentions in the Decision is not in point.

It should be emphasized here, that the complaints of Appellees do not involve changes of the constitution or amendments to the Confession of Faith except in the case of women elders. The actions complained of involved resolutions passed by the General Assembly and activities of certain commissions of the church.

(f) It is noted that on page 16 of the Court's Decision, that Code Section 22-406 is dismissed on the grounds that it only governs controversies between the two factions of a local church, although the Code Section is not limited

to local church disputes. If this is the case, then Code Section 22-408 which is relied on by the Court on page 11 of the Decision and which comes out of the same decision of this Court in *Bates* v. *Houston*, supra, should be dismissed as it too involves a dispute between two factions of a local church.

8. The Court has erroneously construed and misapplied the evidence beginning at the bottom of page 16 of the Decision as the evidence does not support the new criteria of "substantial abandonment or departure" for the following reasons:

[778] (a) The Court cites a resolution of the 1961 General Assembly on page 17 of the Decision by stating that the General Assembly declared ". . . that the doctrine of foreordination, as stated in the Confession of Faith, is not essential to the Reformed theology".

First, it should be noted that the declaration of the General Assembly did not in any way attempt to amend the portion of the Confession of Faith with which it was dealing but merely stated the opinion of a majority of those voting but merely stated that in their opinion it was not necessary for a member to believe that certain persons were preordained to Hell when they are born, in order to be a good Presbyterian.

There was nothing in this resolution that required any individual Presbyterian to believe it if he did not wish to do so. There was nothing in this resolution that amended the Confession of Faith as to predestination, (see Westminster Confession of Faith, paragraph three, pages 36 and 37).

Looking for a moment at the substance of the resolution, there is nothing in it that contravenes basic Christian theology for the basis of belief in Jesus Christ is that all

persons, no matter how evil they may be, can be saved if they will follow Christ.

(b) The same reasoning can be applied to the actions of the General Assembly regarding an amendment to the constitution permitting voluntary Bible reading and prayer in public schools, the National Council of Churches for Christ and their Mississippi Project, and certain statements made by the General Assembly, concerning Viet Nam and the civil rights movement.

[779] In each instance, the action of the General Assembly only amounted to an expression of that particular General Assembly and could just as easily have been amended or modified or rejected by a subsequent General Assembly. None of these actions affected the use of the local church property or required adherence by local churches.

As a matter of fact, the statements cited in the Decision, beginning on page 19, which are taken from Sunday School literature, do not even constitute actions of the General Assembly but are the free expressions of the authors of those works. Add to this the fact that Appellees admitted during the trial that they were not even using the literature of which they were complaining (T-180).

In summary, the alleged actions of the General Assembly constituted isolated instances in which opinions were expressed that were not binding upon the local congregations. The same is true of the literature of which Appellees complain.

When the vast array of doctrines and beliefs of the Presbyterian Church in the United States as set out in its Confession of Faith are compared with the complaints of Appellees, it is difficult to understand how it can be said that they are substantial either as to the doctrines complained about or the volume of complaints.

9. The Court has overlooked *Stewart* v. *Jarriel*, 206 Ga. 855, (2) as cited in the main Brief of Appellants, which case is a full bench decision and is controlling on the question of the intervention of a civil court into ecclesiastical matters.

[780] Although cited in the Brief, we will repeat here a brief excerpt from the Decision: "All questions relating to faith and practice of the church and of its members must belong to the church judicatories, to which the members have voluntarily subjected themselves since, when a person becomes a member of a church, he does so upon the condition of submission to its ecclesiastical jurisdiction and however much he may be dissatisfied with the exercise of that jurisdiction, he has no right to invoke the supervisory power of a civil court so long as none of his civil rights are involved. So long as a professed creed is not subversive to the peace and good order of society, it is not within the province of any department of government to settle differences in creeds or determine what ought or ought not be a fundamental of religious belief."

This case reinforces *Sapp* v. *Calloway*, supra, and makes clear beyond all doubt that Courts of law have no right to become involved in interpreting the doctrines of a church regardless of their reasons for doing so.

Not cited in the original Brief, because it was only handed down on December 7, 1967, and has not as yet reached the advance sheets, is *Northside Baptist Church, et al.* v. *W. Kenneth Goodson, et al.*, by the United States Court of Appeals for the Fifth Circuit as case number 24421. (Because the case is not yet generally available a xerox copy is attached to this Motion).

Of interest to the point involved in this case is the statement on page 7 of the Decision as follows: "State

and Federal courts alike are obliged to uphold the laws and rules of Church governing bodies against dissident factions. [781] *Watson* v. *Jones*, 1871, 80 U.S. (13 Wall.) 679. *Judicial tribunals, as arms of government of the government, must avoid interference* with established church policies and government." [Emphasis added] The Decision is well worth reading in its entirety.

CONCLUSION

As we understand the Court's Decision, it now makes a jury question out of any action of a church in amending its tenets or in expressing itself or taking action upon the same if a dissident member feels that such action by the church amounts to a substantial deviation from a doctrine or doctrines that existed when his local church joined the General Church.

In each instance, the jury would be required to find first what the church believed, second, whether or not the church has deviated from that belief, and, thirdly, whether or not there was a "substantial" deviation. In the process of these determinations the opinion of the jury would be completely substituted for that of the church. To allow this substitution is to violate the freedom of religion clause of the First Amendment to the United States Constitution (made applicable to the states by the Fourteenth Amendment).

The rationale that would allow a jury to become involved in such questions on the grounds of substantial deviation from doctrine, and the alleged benefits that would flow from such rights, is by far overshadowed by the destruction of the doctrine of separation of Church and State and the highly impractical procedure of allowing a jury to determine ecclesiastical matters. For these reasons and the more specific reasons [782] set out hereinbefore, we ear-

nestly and respectfully request this Court to review and reverse its Decision, to reinstate the principles of *Watson* v. *Jones* which are expressed through *Mack* v. *Kime*, *Sapp* v. *Calloway*, and *Stewart* v. *Jarriel*.

The preservation of the connectional system of Protestant churches in Georgia is dependent upon this reversal.

Respectfully submitted,

/s/ Frank Cheatham, Jr.
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(Certificate of service omitted in printing.)

[762] SUPREME COURT OF GEORGIA

Presbyterian Church in the United States et al. v. Eastern Heights Presbyterian Church.

Presbyterian Church in the United States et al. v. Mary Elizabeth Blue Hull Memorial Presbyterian Church.

ON MOTION FOR REHEARING

We have carefully considered all of the contentions made by the appellants and have found them not meritorious. As to the contention that this was a matter for ecclesiastical, not civil, courts, it should be pointed out that the appellants in their answer and cross action filed in each case, specifically prayed for affirmative relief as to the property in question, thereby themselves invoking rulings by the civil court as to the matters now complained of.

The motion for rehearing is without merit, and is denied.

[791] SUPREME COURT OF GEORGIA

Atlanta, February 12, 1968

The Honorable Supreme Court met pursuant to adjournment.

The following order was passed:

Presbyterian Church in the United States et al. v. Eastern Heights Presbyterian Church.

Presbyterian Church in the United States et al. v. Mary Elizabeth Blue Hull Memorial Presbyterian Church.

Upon consideration of the motion for a rehearing filed in these cases, it is ordered that it be hereby denied.

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IN THE

SUPREME COURT OF THE UNITED STATES

Court, U.S.
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OCTOBER TERM, 1968

No. [redacted] 71

PRESBYTERIAN CHURCH IN THE UNITED STATES
and J. LEHMON BRANTLEY, Chairman of the
Administrative Commission of the
Presbytery of Savannah,
Petitioners,

vs.

MARY ELIZABETH BLUE HULL MEMORIAL
PRESBYTERIAN CHURCH,
Respondent,

AND

PRESBYTERIAN CHURCH IN THE UNITED STATES
and J. LEHMON BRANTLEY, Chairman of the
Administrative Commission of the
Presbytery of Savannah,
Petitioners,

vs.

EASTERN HEIGHTS PRESBYTERIAN CHURCH and
FRANK L. PERRY, SR., JOHN BRUNING,
LESTER R. SARGENT, HARDIN
C. NORMAN and ARMIN S.
HUBERT, Trustees,
Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF GEORGIA

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1967

No. .....

PRESBYTERIAN CHURCH IN THE UNITED STATES and J. LEHMON BRANTLEY, Chairman of the Administrative Commission of the Presbytery of Savannah,
Petitioners,

vs.

MARY ELIZABETH BLUE HULL MEMORIAL PRESBYTERIAN CHURCH,
Respondent,

AND

PRESBYTERIAN CHURCH IN THE UNITED STATES and J. LEHMON BRANTLEY, Chairman of the Administrative Commission of the Presbytery of Savannah,
Petitioners,

vs.

EASTERN HEIGHTS PRESBYTERIAN CHURCH and FRANK L. PERRY, SR., JOHN BRUNING, LESTER R. SARGENT, HARDIN C. NORMAN and ARMIN S. HUBERT, Trustees,
Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF GEORGIA

Petitioners pray that a writ of certiorari issue to review the judgment of the Supreme Court of the State of Georgia entered in the above-entitled cases on February 12, 1968.

CITATIONS TO OPINIONS BELOW

The opinion and judgment of the Supreme Court of Georgia and its opinion denying Petitioners' motion for rehearing, printed in Appendix A to this petition, *infra*, pp. A2-A24, are reported in 224 Ga. 61, 159 S.E.2d 690 (1968). The judgment of the Superior Court of Chatham County, Georgia is printed in Appendix A hereto, *infra*, p. A1.

JURISDICTION

The judgment of the Supreme Court of Georgia was dated and entered on January 18, 1968. Petitioners' motion for rehearing was denied on February 12, 1968. The jurisdiction of this Court is invoked under 28 U.S.C.A., § 1257(3).

QUESTION PRESENTED

Does the action by a court of law, sitting with a jury, in rendering a decision on purely ecclesiastical matters concerning the views of an hierarchical church on civil rights and civil disobedience, the qualification of women to hold church office, foreordination, and the Vietnam war violate the freedom of religion clause (Amend. I) and the due process of law clause (Amend. XIV, § 1) of the Constitution of the United States when such decision has the result of transferring control of church property from the central church authority to the dissident members of a local congregation who disagreed with these views but who failed to seek any redress in the avenues established by the government of the church.[1]

1. The local churches had a right of appeal from the findings of the Administrative Commission of the Savannah Presbytery appointed to investigate and act, but failed to take any appeal (R. 374).

CONSTITUTIONAL PROVISIONS

The constitutional provisions which Petitioners contend have been violated by the judgment of the Supreme Court of Georgia are the following clause of Amendment I to the Constitution, to-wit:

> "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; . . ."

and Section 1 of Amendment XIV of the Constitution, to-wit:

> "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

STATEMENT OF THE CASE

In 1966, Mary Elizabeth Blue Hull Memorial Presbyterian Church (Hull Memorial) and Eastern Heights Presbyterian Church (Eastern Heights), each a local church of the Presbyterian Church in the United States and each located in Savannah, Georgia, became dissatisfied with statements in church publications[2] and by the General Assembly of the church on civil disobedience as the final resort to secure individuals their rights (R. 147-159), the action of the General Assembly of the Church which amended the church constitution to make women eligible

2. The complaining churches did not use the Sunday School literature to which they objected but selected other literature as they were at liberty to do (R. 291).

to hold church offices (R. 163-168), the General Assembly's policy statement on the Vietnam War (R. 174-178), the failure of the General Assembly to endorse amending the Constitution of the United States to overcome a decision of this Court preventing Bible reading and prayer in public schools (R. 172-173), and a statement of the General Assembly on foreordination (R. 172).[3] These two local congregations at no time used the regular procedures and discipline of the denomination to express their dissatisfaction (R. 258-260). Instead, a majority of the members present at meetings of the congregation of each local church voted to remove itself from all ecclesiastical control, jurisdiction and oversight of the central church. Shortly thereafter these dissidents filed suit in the Superior Court of Chatham County, Georgia, seeking a permanent injunction against the Presbyterian Church in the United States and its duly constituted officers from interfering with their exclusive use and control of the local church properties in Savannah, Georgia. The Superior Court submitted to a jury the question of whether the General Assembly's statements on civil rights, civil disobedience, the Vietnam War, and the change in the church constitution which made women eligible to hold church

3. Of the matters of which the local churches complained, only one, the ordination of women, involved a change in the Constitution of the Church. This change was brought about in compliance with the Constitution of the Church (R. 165-168, 189, 245). All the other matters complained of: (1) the 1961 General Assembly declaration relative to foreordination; (2) the 1965 General Assembly action refusing to accept an overture relating to Bible reading and prayer; (3) the 1955 pronouncement on the Vietnam conflict; (4) 1965 General Assembly pronouncement on civil disobedience are all statements of points of view of the General Assembly not binding on the communicants in the church and do not constitute an abandonment of, departure from, or change in the faith and practices of the general church. The Georgia Supreme Court seemed to place great weight on statements in some Sunday School literature which had no authoritative weight in the denomination, and which the local churches were free to refuse to use and which respondents did not use (R. 291).

office, constituted a substantial abandonment of the original tenets and doctrines of the Presbyterian Church in the United States and were utterly variant from the original purposes of that church (R. 698, 700, 701, 704). The jury found in favor of the local church members and thereupon the Superior Court entered its judgment (Appendix A1) which enjoined the Presbyterian Church in the United States and its authority from using the church properties.

Petitioners appealed to the Supreme Court of Georgia and that court in an opinion (Appendix A2) affirmed the judgment of the lower court. Petitioners made a motion for a rehearing (Appendix A25) which was denied in an additional opinion (Appendix A24). Petitioners now present to this Court this petition for a writ of certiorari.

THE FEDERAL QUESTION WAS MADE IN AND PASSED UPON BY THE SUPREME COURT OF GEORGIA

By motion for rehearing (Appendix A25) duly filed in the Supreme Court of Georgia within the time allowed by the rules of that court, the federal question hereinbefore stated was raised. That court passed upon the federal question by denying the motion for rehearing and stating that it had carefully considered the motion for rehearing and found it not meritorious (Appendix A24).

The federal question was timely presented since the decision and judgment of the Supreme Court of Georgia specifically overruled its older case of *Mack* v. *Kime*, 129 Ga. 1; 58 S.E. 184 (1907). That case had adopted this Court's interpretation of the First and Fourteenth Amendments to the Constitution stated in *Watson* v. *Jones*, 80 (13 Wall.) U.S. 679 (1871), and held that matters of creed, doctrine or teaching were for decision by church tribunals and not for civil courts and where a right of property turns

upon such a decision the civil courts will allow the property to go in that direction in which the decision of the church tribunal carries it. Prior to the overruling of *Mack* v. *Kime, supra,* which was a full bench decision, petitioners had a right to expect that such interpretation of the First Amendment to the Constitution would be applied to the facts in this case by the Supreme Court of Georgia, under that State's doctrine of *stare decisis* as set forth in Georgia Code Section 6-1611.[4] Instead of following this Court's interpretation of the First Amendment the Supreme Court of Georgia overruled *Mack* v. *Kime, supra,* and declined to follow *Watson* v. *Jones, supra,* and held that the matters of creed, doctrine and teaching of a religious denomination were to be decided by a jury in a civil court instead of a church tribunal, all in complete disregard of the said First and Fourteenth Amendments and the decisions of this Court. No one doubted the authority of *Mack* v. *Kime* until it was expressly overruled in the case at bar. Respondents did not request in their briefs in the Supreme Court of Georgia that *Mack* v. *Kime, supra,* be overruled. The Supreme Court of Georgia overruled the case at its own instance.

Petitioners averred in their answer in each case that Respondent's action in appropriating the property of these churches to their use as a church separate and independ-

4. This view was further strengthened by the fact that in *Stewart* v. *Jarriel*, 206 Ga. 855(6), 59 S.E.2d 368 (1950), the Supreme Court of Georgia had cited *Mack* v. *Kime, supra,* as authority for the proposition that ". . . courts of equity will not interfere with the internal affairs of a religious organization involving questions of faith, practice, discipline, ecclesiastical law, rule, custom or church government." In *Sapp* v. *Callaway*, 208 Ga. 805, 810, 69 S.E.2d 734, 739 (1952), the Georgia Supreme Court cited *Watson* v. *Jones, supra,* as authority for the proposition that: "The traditional American doctrine of freedom of religion and separation of church and state carries with it freedom of the church from having its doctrines or beliefs defined, interpreted or censored by civil courts."

ent from the Presbyterian Church in the United States was in violation of "the laws of . . . the United States of America . . ." (R. 22). Petitioners also argued in their brief to the Georgia Supreme Court that to allow civil courts to become involved in religious questions would be a violation of the constitutional doctrine of separation of church and state. Nevertheless that court upheld a judgment which decided purely ecclesiastical questions.

When the decision by the Supreme Court of Georgia was handed down and Petitioners learned for the first time that that court would not follow this Court's interpretation of the First Amendment and had overruled its landmark case which did, they promptly and timely filed their motion for rehearing in which such departure was directly brought to the attention of that court and the fact that its judgment was in conflict with the Constitution was squarely presented (R. 766 to 772; Appendix A27-A39). Thus, the Supreme Court of Georgia passed upon the federal questions raised by Petitioners and decided each against Petitioners and as we contend contrary to the Constitution and the decisions of this Court. The constitutional questions were, we think, under the facts set forth above, properly and timely raised and were considered, passed upon and rejected by the Supreme Court of Georgia. See *Brinkerhoff-Farris Co.* v. *Hill*, 281 U.S. 673 (1930) and *Herndon* v. *Georgia*, 295 U.S. 441 (1935) and the cases cited there at page 444.

REASONS FOR GRANTING THE WRIT

I.

Whether Hierarchical Churches May Be Denied Control of Local Church Property Because of the Mother Church's Attitude Toward Social Change Is of Great Public Interest.

As a result of social changes in the Southern states since 1954, many churches with hierarchical government have seen fit to express opinions concerning the propriety of civil disobedience when related to civil rights. The Presbyterian Church in the United States, sometimes called the Southern Presbyterian Church, acting through its General Assembly, was among those who did so, saying:

> "The Presbyterian Church, U. S., desires at this time to reaffirm the obligation of all her obedient sons and daughters; To live responsibly under the law of the land; To use personal influence and ballot to enhance the rule of law so that injustice may be replaced with justice, and the full provisions of the law for justice, protection, and liberty may be enjoyed by every citizen of every community; To regard civil disobedience as a measure of last resort to be employed only in circumstances of otherwise irremediable need, and in the exercise of which the whole concept of law is not denied, but affirmed; and To continue to support and regard with compassion those who practice civil disobedience when no legal recourse has been left open to them and who act in Christian conscience and allegiance to Almighty God." (R. 159).[5]

Disagreement with this statement is one of the main reasons advanced by respondents to justify their withdrawal from the Presbyterian Church in the United States (R. 169-170).

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5. The basic reasoning which preceded this quotation from the church's statement is set forth in Appendix B hereto, p. A40.

The Presbyterian Church is not the only Southern church to have such difficulty. The Methodist Church had a similar situation in Alabama where a local church declared itself in disagreement with the existing social policies of the parent church and announced themselves separate from the Methodist Church, relying upon an Alabama statute[6] which permitted a local church to withdraw local church property from the use and control of the parent church upon a vote of 65% of its members. The Federal courts declared the law to be in violation of the First Amendment and control of the church property was returned to the parent church.[7]

If the decision of the Supreme Court of Georgia is allowed to stand, it may well be followed by many Southern state courts and encourage widespread withdrawal of church property from the discipline of the parent church simply because there is disagreement concerning social policy.

All churches having an hierarchical form of government with local churches in the South are greatly interested in having this Court settle the property rights of the parties where a majority of the members of the local church becomes dissatisfied with the parent church's social policies and withdraw their affiliation. May we also suggest that similar problems may well exist or soon become existent in major cities where social change is now in progress and thus the question now presented to this Court will be of great moment to all churches everywhere in the United States who have church organization similar to the Presbyterians and the Methodists.

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6. Code of Alabama, Tit. 58, §§ 104-113.

7. *Northside Bible Church, et al. v. Goodson*, 387 F.2d 534 (5th Cir. 1967) (R. 784-789).

II.

The Decision of the Supreme Court of Georgia Is Contrary to the Decisions of This Court in Kedroff v. St. Nicholas Cathedral, 344 U.S. 94 (1952) and Kreshik v. St. Nicholas Cathedral, 363 U.S 190 (1960) and in Watson v. Jones, 80 (13 Wall.) 679 (1871).

(a) The First and Fourteenth Amendments to the Constitution of the United States guarantee that a state[8] cannot, either through its legislative or judicial branches, prohibit the free exercise of religion by deciding purely ecclesiastical matters, and this Court has so held in *Kedroff* v. *St. Nicholas Cathedral,* 344 U.S. 94 (1952), and *Kreshik* v. *St. Nicholas Cathedral,* 363 U.S. 190 (1960). However, the decision of the Supreme Court of Georgia which Petitioners ask this Court to review allows civil courts to enter the ecclesiastical field and determine whether a change in the parent church's social policy authorized dissidents to secede from the parent church and take with them control of church property. Therefore this decision is in direct conflict with the decisions of this Court in *Kedroff* and *Kreshik.*

In *Kedroff,* this Court considered the constitutionality of a 1925 New York law which undertook to transfer the control of Russian Orthodox churches in New York from the Patriarch in Moscow to the governing authorities of the Russian Orthodox Church in America. The case first reached the courts when the American branch of the Church brought suit in the state court to determine the right to the use and occupancy of St. Nicholas Cathedral in New York City. Relying on the New York law, the

8. This Court held in *Cantwell* v. *Connecticut,* 310 U.S. 296 (1940), that the freedom of religion clause of the First Amendment is made applicable to the states by the Fourteenth Amendment.

New York Court of Appeals[9] ruled in favor of the American branch. The case was then brought to this Court which reversed and held that the New York law was unconstitutional in that it violated the freedom of religion clause of the First Amendment, made applicable to the states by the Fourteenth Amendment, because the law displaced one church administrator with another.

The question was again presented to this Court in the *Kreshik* case. When the *Kedroff* case was reversed and remanded, the New York Court of Appeals ordered a retrial, on a common law issue, of the question of the right of the American branch of the Church to use and occupy the Cathedral. After the trial the New York Court of Appeals directed the entry of judgment against the Patriarch in Moscow, ruling that by reason of the domination, found by that Court to be the fact, of the Patriarch by the secular authority of the U.S.S.R., his appointees could not under the common law of New York validly exercise the right to occupy the Cathedral. This Court granted certiorari and again reversed the New York court, holding that it makes no difference whether the State acts through its legislature, as in *Kedroff*, or through its judiciary, as in *Kreshik*, because whether the action is legislative or judicial, it was still the application of State power. Thus the judicial principles ruled on in the *Kedroff* dispute forbid the judiciary[10] as well as the legislature of a state to interfere with the free exercise of religion by attempting to transfer control of church property from one segment of the Church to another. The decision of the Georgia Supreme Court allows the judiciary to so inter-

9. 302 N.Y. 1, 96 N.E.2d 56 (1950).

10. As authority, this Court cited *N.A.A.C.P.* v. *Alabama*, 357 U.S. 449, 463 (1958) and *Shelley* v. *Kraemer*, 334 U.S. 1, 14-16 (1948).

fere, and for this reason the present case is in direct conflict with this Court's decisions in *Kedroff* and *Kreshik*.

(b) The Georgia Supreme Court's decision also conflicts with this Court's holding in *Watson* v. *Jones*, 80 U.S. (13 Wall.) 679 (1871). In this case the membership of the Third or Walnut Street Presbyterian Church in Louisville, Kentucky, divided over the slavery issue. The governing body (General Assembly) of the Presbyterian Church in the United States and a part of the local congregation supported the anti-slavery position and a vigorous minority of the congregation supported the slavery cause of the South. The Kentucky appellate court held in favor of the pro-slavery group and awarded to them possession of the church property. *Watson* v. *Avery*, 65 Ky. (2 Bush.) 332 (1867). After this decision in the State court, several anti-slavery members who lived in an adjoining state brought suit in the Federal Court on diversity grounds. The Circuit Court for the District of Kentucky held in favor of the anti-slavery group and awarded possession of the church property to that group. On appeal, this Court affirmed the decision on the ground that the anti-slavery faction had been recognized by the Presbyterian Church's highest authority, the General Assembly, and the General Assembly had in effect decided that the possession of the local church properties belonged to the anti-slavery group. The civil courts must, therefore, accept such decisions as final. The decision of the Supreme Court of Georgia, which did not accept as final and binding the decision of the Administrative Commission of the Presbytery of Savannah, conflicts with and is contrary to this Court's decision in *Watson* and cases following it.[11]

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11. *Watson* v. *Jones* has been cited approvingly by this Court on at least seven occasions, most recently in *Abington School Dist.* v. *Schempp*, 374 U.S. 203 (1963), and has been cited by other courts over two hundred (200) times.

Summarizing, in cases involving the right to use and occupy church properties, this Court has consistently held that the decision by the church's ruling body must control, and the First Amendment forbids states, either through their legislative or judicial branch, to overrule such decisions by the church. To hold otherwise would destroy the wall of separation between church and state which this Court has so zealously protected. The decision of the Supreme Court of Georgia, however, does hold otherwise and if allowed to stand will result in the destruction of that wall.

III.

The Decision of the Supreme Court of Georgia Is in Conflict with a Decision of the Fifth Circuit Court of Appeals and with Decisions of Other States.

The following cases which involve the control of church property in contests between members of the local church and the central governing body of hierarchical or representative churches—such as the Presbyterian and Methodist denominations—follow *Watson* v. *Jones, supra*, and the reasons expressed in *Kedroff* v. *St. Nicholas Cathedral, supra.*

Northside Bible Church v. *Goodson*, 387 F.2d 534 (5th Cir. 1967).

St. John's Presbytery v. *Central Presbyterian Church of St. Petersburg*, 102 So.2d 714 (Fla. 1958).

Bramlett v. *Young*, 93 S.E.2d 873 (S. C. 1956).

Serbian Eastern Orthodox Diocese v. *Ocokoljich*, 219 N.E.2d 343 (Ill. 1966).

Knight v. *Presbytery of Western New York*, 270 N.Y.S. 218 (1967).

The common thread running through all of these cases is that the civil courts will simply not be allowed to de-

termine purely ecclesiastical matters, and the fact that property disputes are involved does not change the rule. As Mr. Justice Miller said in *Watson* v. *Jones*, *supra*, if the civil courts are allowed to determine such issues after the church governing bodies had ruled, "[i]t would therefore be an appeal from the more learned tribunal in the law which should decide the case, to one which is less so." The result is that members of an hierarchical or connectional church, such as the Presbyterian Church in the United States, cannot withdraw from the parent church and retain the use and control of the local church properties. The decision of the Georgia Supreme Court reaches a result directly contrary to these cases.

IV.

The Decision of the Supreme Court of Georgia, If Allowed to Stand, Will Permit Any Church Member Who Is Dissatisfied with a Decision of His Church's Ruling Body to Carry His Complaint to a Court of Law.

The Georgia Supreme Court's decision which Petitioners ask this Court to review poses a threat to the continued existence of hierarchical or connectional churches. Its ruling makes it possible for any church member who feels that the governing body of his church has taken some action or made some announcement which constitutes a departure from the original tenets of the faith to carry his complaint to the civil courts for a decision and have a jury decide these purely ecclesiastical matters. And if the issue involves some action by the church governing body which is unpopular in the community, such as expressing an opinion on a civil rights movement which might be unpopular in Savannah, Georgia, then a local jury can award the control and use of local church property to the dissatisfied member. The result is that a jury

of twelve laymen is called upon to interpret the faith, doctrines and teachings of a particular church when the jury members are not qualified to make such a decision.[12] But even more disturbing is the fact that an arm of the state is allowed to enter the ecclesiastical arena and make decisions which prefer one religious group over another. Surely the wall of separation between church and state is higher than that. In this respect this Court's opinion in *Everson* v. *Board of Education*, 330 U.S. 1 (1947), beginning at page 15 is worthy of note. There Mr. Justice Black, speaking for the majority, said:

> "The 'establishment of religion' clause of the First Amendment means at least this: Neither a state nor the Federal Government can, openly or secretly, participate in the affairs of any religious organizations or groups and vice versa. In the words of Jefferson, the clause against establishment of religion by law was intended to erect 'a wall of separation between church and State.'" [Citations omitted].

Churches are not dead or stagnant bodies but are continually growing and changing. But if the decision of the Georgia court is allowed to stand, churches will be effectively prevented from speaking out or taking a stand on pressing issues, or from clarifying or explaining certain of their doctrines for fear that disgruntled members will take their complaints to the courts. A brief review of the evidence in this case points out the problem. Here the governing body of the Presbyterian Church in the United States spoke out on several controversial issues, including a statement that civil disobedience under certain circumstances might be justified and a refusal to endorse a proposal to seek a constitutional amendment to

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12. Members of the church involved would be disqualified to serve on the jury.

permit prayer and Bible reading in the public schools, among others. Because of the Church's involvement in these matters, which were unpopular among the members of Respondents, Respondents chose to sever all connections with the parent church and to withdraw itself and its property from the church's control and jurisdiction. And when the Administrative Commission of the Savannah Presbytery attempted to prevent the diversion of the local church property, Respondents took the matter to the courts.[13] If Respondents can take such action because they disagree with certain statements of the parent church, then every local church can take the same action and submit its complaints to a court of law. The result is to completely destroy the authority in hierarchical churches.

CONCLUSION

Because of the importance of the question presented and for the foregoing reasons, Petitioners respectfully ask this Court to grant this petition for a writ of certiorari.

Respectfully submitted,

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.....
ROBERT B. TROUTMAN

.....
CHARLES L. GOWEN
Counsel for Petitioners

13. Respondents took no steps to pursue the avenues of appeal from the decision of the Presbytery's Commission (R. 374).

CERTIFICATE OF SERVICE

I, Charles L. Gowen, of counsel for Petitioners, hereby certify that I have served a copy of the foregoing Petition for Writ of Certiorari by depositing a copy of the same in the United States Mail, properly stamped and addressed, to each of the following:

Owen H. Page, Esq.
Attorney at Law
Realty Building
Savannah, Georgia

Richard T. Cowan, Esq.
Frank B. Zeigler
Attorneys at Law
24 East Oglethorpe Avenue
Savannah, Georgia

This ..... day of ....., 1968.

.....

CHARLES L. GOWEN

APPENDIX A

IN THE SUPERIOR COURT OF CHATHAM COUNTY, GEORGIA

EASTERN HEIGHTS PRESBYTERIAN CHURCH AND FRANK L. PERRY, SR., ET AL., AS TRUSTEES OF EASTERN HEIGHTS PRESBYTERIAN CHURCH

vs.

PRESBYTERIAN CHURCH IN THE UNITED STATES, ET AL.

No. 5085

Judgment

The jury impaneled to try the above styled cause of action having on December 15th returned a verdict in behalf of the Plaintiffs and against the Defendants, a judgment is hereby rendered in behalf of the Plaintiffs and against the Defendants permanently enjoining and restraining said Defendants from trespassing upon the Plaintiffs' properties in any manner which would interfere with Plaintiffs' quiet and peaceful possession and use thereof.

This December 22, 1966.

/s/ Dunbar Harrison
Judge Superior Court,
E.J.C. of Georgia

24366. PRESBYTERIAN CHURCH IN THE UNITED STATES et al. v. EASTERN HEIGHTS PRESBYTERIAN CHURCH.

24367. PRESBYTERIAN CHURCH IN THE UNITED STATES et al. v. MARY ELIZABETH BLUE HULL MEMORIAL PRESBYTERIAN CHURCH.

1. Civil courts will, in a proper case, prevent diversion of church property from the doctrine or purpose to which it was originally devoted.
2. The degree of abandonment of, or departure from, original tenets of faith and practice by the general church which must be shown to afford such relief to the local churches is substantial, rather than complete or absolute.
3. The evidence presented an issue for the jury as to whether there was such a substantial abandonment or departure by the general church.
4. The above rulings are controlling adversely to the appellants upon all of their enumerations of error.

ARGUED NOVEMBER 13, 1967—DECIDED JANUARY 18, 1968—REHEARING DENIED FEBRUARY 12, 1968.

Injunction. Chatham Superior Court. Before Judge Harrison.

Frank S. Cheatham, Jr., for appellants.

Owen H. Page, Richard T. Cowan, Frank B. Zeigler, for appellees.

GRICE, Justice. The issue here is whether two local Presbyterian churches, in withdrawing from the general organization, are entitled to the local church properties. It stems from claims by the local churches that the gen-

eral church has abandoned the fundamental tenets of faith and practice existing when the local churches affiliated with it.

This litigation began on May 26, 1966, when Mary Elizabeth Blue Hull Memorial Presbyterian Church and Eastern Heights Presbyterian Church, incorporated nonprofit religious institutions located in Savannah, filed in the Superior Court of Chatham County petitions against the Presbyterian Church in the United States (herein referred to as "the general church") and the named chairman of the Administrative Commission of its Presbytery of Savannah. Each of the petitions sought injunctive relief against the general church organization interfering with the local churches' exclusive use and control of the local church properties. The defendants denied the material allegations of the petitions and sought affirmative equitable relief.

The two cases were tried together, resulting in verdicts and judgments in favor of the local churches.

The enumerations of error complain of the trial court's denial of motions to dismiss the petitions, for nonsuit and for directed verdict, the admission of certain evidence, and also one portion of the charge to the jury.

The allegations of the petition of Eastern Heights and its trustees, insofar as necessary to recite here, are those which follow.

The congregation, on April 17, 1966, adopted a resolution, a copy of which was transmitted to the general church and its Savannah Presbytery. This resolution affirmed the congregation's religious faith and beliefs as originally adopted by the general church in 1861, declared that the general church had violated its constitution and

departed from the faith and practice existing when Eastern Heights affiliated with it, and declared that Eastern Heights severed all connection with the general church and was henceforth an autonomous Presbyterian church. This resolution recited that the violations and departures of the general church from its original tenets of faith and practice included the following: ordaining of women as ministers and ruling elders, making pronouncements and recommendations concerning civil, economic, social and political matters, giving support to the removal of Bible reading and prayers by children in the public schools, adopting certain Sunday School literature and teaching neo-orthodoxy alien to the Confession of Faith and Catechisms, as originally adopted by the general church, and causing all members to remain in the National Council of Churches of Christ and willingly accepting its leadership which advocated named practices, such as the subverting of parental authority, civil disobedience and intermeddling in civil affairs.

The petition alleged that the general church has also made pronouncements in matters involving international issues such as the Vietnam conflict and has disseminated publications denying the Holy Trinity and violating the moral and ethical standards of the faith.

It averred that all of the foregoing constitute a substantial, fundamental and radical departure from the faith and practice of the general church and have occurred since the affiliation of Eastern Heights with it in 1930.

The petition further recites that on May 19, 1966, an Administrative Commission of the general church's Presbytery of Savannah took certain action by a resolution which, in material part, recited as follows: The Presbytery had received letters from the named ministers of

Eastern Heights and Hull Memorial in which each renounced the jurisdiction or authority over him of the general church and its Savannah Presbytery; that each had thus removed himself from office and membership in the general church and was no longer entitled to perform with ordained authority any act in it; that by the resolutions of Eastern Heights and Hull Memorial of April 17, 1966, all elders of both churches, except one not contacted and another who dissented, had removed themselves from office and membership in the general church; that they no longer had any authority to exercise office derived from the general church; that since there was but one ruling elder in each of the two churches and one ruling elder does not constitute a Session so as to exercise jurisdiction over the two local churches, the Commission "will secure Ministerial leadership and provide regular services of worship in the sanctuaries of [the two churches] for those members who wish to continue their membership in and communion with [the general church], and will take such further action as shall be necessary in accordance with the Constitution of [the general church]."

The petition also averred that by such Administrative Commission action, the defendants threaten to trespass upon the property of Eastern Heights by assuming original jurisdiction over it, denying it the right to exercise authority over its affairs and imposing other ministerial leadership upon it for the purposes of holding regular worship services; that the removal of the regular minister and the imposition of another would disrupt the good order and peace of its worship services; that the threatened acts of trespass would destroy the quiet and peaceful possession it now enjoys and would have a demoralizing effect upon it: that unless the threatened tres-

pass is enjoined Eastern Heights will be irreparably damaged, the peaceful utility and enjoyment of its property will be adversely affected, and the dignity and sanctity of the church edifice will be intruded upon.

The plaintiffs declare that they are seeking to protect their faith and avoid one in conflict with that in existence when they affiliated with the general church, and that they should have title to the church property quieted and confirmed in them to preserve the trust. They allege that Eastern Heights is vested with title and ownership and now enjoys quiet and peaceful possession of described real property, conveyed to it or to trustees of it.

The prayers of the petition were for temporary and permanent injunction against the threatened acts of trespass hereinabove described and other relief.

The allegations of the petition of Hull Memorial are similar in substance to those of Eastern Heights. Those necessary to recite are as follows: that it owns described real estate, one portion of which was acquired in 1914 by deed reciting that it was to be used for a place of worship by a church of the Presbyterian denomination known as the Mary Elizabeth Blue Hull Memorial Presbyterian Church; that it became affiliated with the general church in 1890; that no moneys have ever been contributed to it by the general church or by its Savannah Presbytery; that since it acquired its property the general church has made stated revolutionary, fundamental, unlawful, and radical diversion from the Presbyterian faith; and that in order to remain true to the Presbyterian doctrines and practices in force when it affiliated with the general church and acquired its property, it withdrew from the general church on April 17, 1966. The petition prayed

for the same relief sought by Eastern Heights and in addition asked that title to the local church property be adjudged in it.

To each of these petitions the defendants interposed similar answers and cross bills which denied the material allegations. They made allegations which, insofar as necessary to relate here, follow. Prior to the adoption of their withdrawal resolutions the members and ruling elders of Eastern Heights and Hull Memorial were members of the general church, which is representative in form, and were subject to its constitution and laws. Because of such withdrawal by the two local churches the Administrative Commission took the action recounted in its resolution of May 19, 1966, referred to above. Its decision was with full authority of the Savannah Presbytery, was made known to the plaintiffs, but was not appealed from and therefore became final and binding on the parties and the court. The defendants have a right of possession to the properties but the plaintiffs have appropriated them to the use of the two local churches, in violation of law and the rules of the church. This constitutes a continuing trespass which must be enjoined or the defendants will be irreparably injured, and the peace and dignity of their right of possession of the properties for religious worship for those loyal to the general church will be impaired. Each answer and cross action prayed, among other matters, for injunctive relief against the local churches' appropriation of the local properties and for decree that the Savannah Presbytery of the general church has an implied trust over such properties as the rightful representative of the general church for the use and benefit of those members adhering to the doctrines and regulations of the general church.

Upon the trial the evidence took a broad range, both oral and documentary. The highlights of the history of the Presbyterian denomination were recited by theologians. They traced the beginning more than four hundred years ago, the spread of the movement to the American colonies in the eighteenth century, the establishment of the Presbyterian Church in the United States of America, the withdrawal from it in 1861 by churches in the southern portion of the United States, and the organization in Augusta, Georgia, of the defendant Presbyterian Church in the United States, sometimes referred to as "The Southern Presbyterian Church." They enumerated the bases of faith and practice of this organization when formed in 1861 as the Old and New Testaments of the Holy Bible, the Westminster Confession of Faith, and the Larger and Shorter Catechisms.

They stated that the constitution of the general church is composed of such Confession of Faith, the two Catechisms, the Book of Church Order, and the Directory of Worship. They explained that the government of the general church is representative or connective, and not congregational. They recited that the structure of this government, in ascending order, is as follows: the Session of each local church which is made up of its ruling elders; the Presbytery which is constituted of several Sessions in a geographical area; the Synod which is ordinarily composed of the Presbyteries within a state; and the General Assembly which is formed by representatives from the entire organization. They related that these Sessions, Presbyteries, Synods, and the General Assembly also constitute the judicial system of the church organization.

The evidence was that the constitution of the general church contains no provision governing the situation here.

There was considerable testimony as to whether the general church had over the years in various controversies recognized local ownership of church property. It was shown that the only provision in its constitution for a Presbytery to take local church property was when the congregation no longer existed.

Local witnesses recounted the origin and development of the two local churches.

Eastern Heights began as a mission of the Independent Presbyterian Church of Savannah. It was incorporated on December 6, 1930, and on the following day was commissioned by the Savannah Presbytery of the general church. At that time the Independent Church conveyed to Eastern Heights property to be used as a chapel, this deed naming as grantee "Eastern Heights Presbyterian Church, a religious corporation." Later two other tracts were acquired by it, each deed naming as grantees certain persons as "Trustees of the Eastern Heights Presbyterian Church, and their successors in office." One of these deeds provided that the property was to be held in trust "for the use and benefit of the congregation of the Eastern Heights Presbyterian Church." At no time has the general church made any gift or loan to Eastern Heights.

Hull Memorial was organized as an independent Presbyterian church and became affiliated with the general church in 1890. A portion of the property now in question was acquired in 1914; the deed named the Mary Elizabeth Blue Hull Memorial Presbyterian Church as grantee and recited that the property was to be used as and for a place of worship by a church of the Presbyterian denomination known as that named grantee. Later other property was acquired by it and these later deeds also

named the Hull Memorial Church itself as grantee. Neither the general church nor its Savannah Presbytery has contributed any money to the purchase, buildings, operations, or maintenance of Hull Memorial.

Many documents were introduced in evidence. These included deeds, the withdrawal resolutions of the two local churches and the resolution showing the actions of the Administrative Commission above referred to.

Other documents pertained to the faith and practice of the general church when Eastern Heights and Hull Memorial affiliated with it and acquired the properties now in question. Many of these relate to actions which the two local churches cite as abandonment by the general church of its original tenets of faith and practice. These documents will be referred to later in this opinion.

From the foregoing facts, we regard the controlling question to be this: Are local Presbyterian churches which withdraw from the general church, charging abandonment by the general church of the tenets of faith and practice existing when the local churches affiliated with it, entitled to maintain an action in the civil courts for the possession and use of the local church properties, legal title to which is in the local churches?

1. The appellants strongly urge that the petitions raise ecclesiastical questions which are exclusively within the jurisdiction of the church, not of the civil courts, and therefore that the plaintiffs cannot maintain this action.

In considering this contention we are mindful that "The traditional American doctrine of freedom of religion and separation of church and state carries with it freedom of the church from having its doctrines or beliefs defined, interpreted, or censored by civil courts." *Sapp v. Callaway*, 208 Ga. 805, 810-811 (69 SE2d 734).

But, at the same time, we also keep in mind that when property rights are involved civil courts will, in a proper case, protect them against wrongful diversion. Our *Code*, § 22-408, provides: "Courts are reluctant to interpose in questions affecting the management of the temporalities of a church; but when property is devoted to a specific doctrine or purpose, the courts will prevent it from being diverted from the trust."

In this country the authorities are virtually unanimous in holding that because of the connective governmental structure of the Presbyterian Church, there is an implied trust upon the local church properties for the benefit of the general church. See in this connection, Watson v. Jones, 80 U.S. (13 Wall.) 679 (20 LE 666); St. John's Presbytery v. Central Presbyterian Church of St. Petersburg, (Fla.) 102 S2d 714, 717; Presbytery of the Everglades v. Morgan, (Fla.) 125 S2d 762. Furthermore, in the trial of the present cases the court charged the jury that the local church properties in question were subject to an implied trust in favor of the general church, and no cross appeal was taken on this portion of the charge by the local churches. We take the view that such a trust is conditioned upon the general church's adherence to its tenets of faith and practice existing when the local church affiliated with it and that an abandonment of, or departure from, such tenets is a diversion from the trust, which the civil courts will prevent.

This court in *Mack* v. *Kime*, 129 Ga. 1 (2) (58 SE 184, 24 LRA (NS) 675), held: "The general rule is that where property rights are involved, the civil courts will interfere to protect the members of an ecclesiastical organization who adhere to the tenets and doctrines which the organization was organized to promulgate, and protect

them in the right to use the property, as against those members of the organization who are attempting to divert the same to purposes utterly foreign . . . " See also, *Tucker* v. *Paulk*, 148 Ga. 228 (3) (96 SE 339), where this court approved the trial court's finding on whether the plaintiffs had "departed from the organization and doctrine of the church."

A different result is not required because of the rule that "Generally, the civil courts will look to the decisions of the constituted tribunals of a church in determining whether or not there may have been an abandonment of the faith, doctrines, practices, and decorum of a church." *Sapp* v. *Callaway*, 210 Ga. 277 (79 SE2d 532). Also, see *Mack* v. *Kime*, 129 Ga. 1, supra. Here, the Administrative Commission appointed by the Savannah Presbytery made no decision as to whether the general church had abandoned its original tenets of faith and practice. Furthermore, the local churches were not required to seek an adjudication of such issue within the framework of the general church because the diversions complained of had already occurred and the local churches had withdrawn and severed their connection with it.

The local churches charge abandonment of, or departure from, original tenets of faith and practice by the general church, and hence the civil courts will entertain the action.

2. Appellants contend that even if the civil courts will determine the question of abandonment of, or departure from, original tenets, the local churches must, under *Mack* v. *Kime*, 129 Ga. 1, supra, show absolute or complete abandonment in order to obtain relief.

The *Mack* case, in discussing the degree of abandonment or departure necessary to obtain protection, uses

terminology such as "complete abandonment," "purposes utterly foreign," "entirely abandon," "utterly abandon," and "abandon altogether." We disagree. We do not believe that "complete" or like degree of abandonment or departure is necessary for relief. To the extent that *Mack* v. *Kime*, .129 Ga. 1, supra, requires such standard, it is expressly overruled.

The degree of abandonment or departure necessary to be shown to obtain protection in civil courts is that emphasized in the case at bar by the trial judge—substantial abandonment. "Substantial" is synonymous with "fundamental," "material," "vital," and "important," and is in keeping with the standard which is recognized in the following treatise statement: "No denomination, however, can exercise its share of control over a local congregation so as to require the property of the latter to be used for propagation of doctrines in conflict with the fundamental teachings of the denomination as accepted at the time the local congregation united with the denomination. The unlawful change of the constitution and confession of faith by the superior judicatory does not authorize a new use of its property by the individual church. In such case those who adhere to the original constitution and confession of faith are entitled to the use of the property." 76 CJS 849, Religious Societies, § 70. See also, 45 AmJur 771, Religious Societies, § 61; Annots., 24 LRA (NS) 692, 8 ALR 105, 70 ALR 75.

To condition relief upon *complete* abandonment would impose upon the local churches the burden of showing that the general church had rejected each and every tenet of faith and practice existing when the local churches affiliated with it. For instance, suppose that this general church declared that it had abandoned as part of its tenets

of faith and practice the entire New Testament. With that abandonment would go the existence of Jesus Christ, and the accounts of His birth, ministry, crucifixion, resurrection, and ascension into heaven. That would not be a "complete" abandonment of all the original tenets of faith and practice of that church. Yet even with the Old Testament, with all of its value, remaining, this would be an entirely different theology.

Therefore, we hold that upon a showing of substantial abandonment of, or departure from, the original tenets of faith and practice by the general church, the civil courts will afford protection to the local churches as to possession and use of the local church properties, free of any claim by the general church.

It is significant that here the issue is between the local churches and the general church, not between two factions of a local church, as governed by *Code* § 22-406, which in material part provides that ". . . The withdrawal by one part of a congregation from the original body . . . is a relinquishment of all rights in the church abandoned." In this connection, we are familiar with some statements to the effect that the members of the local church who withdraw from the general church are not entitled to the property. See 45 AmJur 778, Religious Societies, § 68; 76 CJS 850, Religious Societies, § 71; St. John's Presbytery v. Central Presbyterian Church of St. Petersburg, (Fla.) 102 SE2d 714, supra, and citations. However, we know of no decision involving an issue between a local church and its general church, where a substantial abandonment of, or departure from, the original tenets of faith and practice by the general church is shown, which holds that in such situation the local church is not entitled to the use of its property. The cases relied upon by the appellants are thus distinguishable.

3. This brings us to the evidence and an evaluation of it in the light of the requirement of *substantial* abandonment or departure.

The first of the actions cited by the two local churches is the declaration of the 1961 General Assembly of the general church that the doctrine of foreordination, as stated in the Confession of Faith, is not essential to Reformed theology. This, the local churches contend, violates the Westminster Confession of Faith and the Larger and Shorter Catechisms in stated particulars.

Likewise claimed as departure from original tenets of faith and practice is the position taken by the General Assembly in 1965 in refusing to endorse a proposal by a Presbytery to seek constitutional permission for voluntary Bible reading and prayer in the public schools.

Another contended departure related to involvement, through the National Council of Churches for Christ, in the Mississippi Delta Project, a civil rights movement sponsored by several organizations.

Complaint is also made of the action taken by the 1963 General Assembly authorizing the ordination of women as ministers and ruling elders. This, the local churches claim, violates designated portions of the Scriptures and the Book of Church Order.

Several actions taken by this highest authority of the general church are urged to have been improper involvements in civil affairs, constituting an abandonment of original faith and practice.

One of the involvements thus complained of was a 1966 pronouncement on the Vietnam conflict. This pronouncement approved the policy statement which the Na-

tional Council of Churches for Christ had announced in 1965. That statement, after expressing sentiments upon the situation, concluded with the recommendation that the United States: "Continue to reaffirm and manifest its readiness for unconditional discussion and negotiation in such manner as will remove any uncertainty about official policy relating to the termination of military action. Such reaffirmation might be strategically expressed by the cessation of all bombing of North Vietnam for a sufficient period to create more favorable circumstances for negotiations to begin and with a simultaneous effort to induce the North Vietnam government to stop sending military personnel and material into South Vietnam."

Another involvement in civil affairs complained of was endorsement by the General Assembly of the civil rights movement.

One of the strongest objections by the two local churches is directed at the position of the general church on the subject of civil disobedience. Advocacy of this, insofar as the evidence shows, began in the spring of 1964.

The material for Sunday School teachers in "The Earnest Worker" for that period included a presentation entitled "The Rightful Claims of Government." After stressing obligations to both government and God, it declared that "these are times when the civil authority (or church authority, for that matter) must be disobeyed . . ." and stated that whether or not peace and quiet should be maintained in a community where there is injustice is a matter for each person to decide with his own conscience and what he believes will be pleasing to God.

The Sunday School Quarterly for Older Youth, the approximate age group of 12 to 15, for May 24, 1964, con-

tained a statement on civil disobedience, which is quoted here in full:

"Civil Disobedience. We are making history in our country and as Christians we should be awake to that fact. The problems created by segregation or integration are not new; they are as old as the human race. In our country the problem is not new, either, but in these past years we are all witnessing a new approach to that problem. For a century many have felt that the problem would solve itself as time went on; but we know now that hardly anything in human relations gets solved all by itself. About some sickness in the body, or a broken leg, we rightly say: be patient and let nature take its course. But with human problems one can hardly say that; human nature is not dependable, and is quite as likely to go the wrong way as the right way. In fact, the Bible keeps on drumming away at the idea that it is more likely to go that wrong way than the right way. That is the first point we should make today: that good causes must be helped along, and we Christians must not walk away from them.

"During the centuries people have used various methods of trying to get their problems solved: revolution, insurrection, immigration, strikes, shutdowns, sit-ins, picket lines. Each of these has had varied success in achieving results that were looked for. The phrase *civil disobedience* is something Gandhi has brought into our English language, and he says he got the idea from Jesus and the Sermon on the Mount. Today's reference to Luke 20 is of importance here. Jesus tells his questioner to give to Caesar the things that are Caeser's, but to God the things that are God's. This not only means that I pay my legitimate taxes to Caesar, and go to church on Sunday and

put something into the offering plate for God. It is not quite as simple as that. It may also mean that I *withhold* from Caesar what Caesar thinks is his, but what really belongs to God!

"The disciples ignored established customs when they walked through the cornfields, plucked some corn and ate it; this was threshing in the judgment of the scribes, and was prohibited. Jesus violated the code of the Pharisees' when He healed people on the Sabbath for the law at that time prohibited this. To help a sick man takes priority over the Sabbath laws; a moral law takes precedence over a civil law. You do not start a revolution; you do not bring in tanks and set machine guns up in front of the mayor's residence to shoot him when he comes out. You quietly make your protest known, persistently you make it known. When asked about it you give your morally justifiable reasons for doing what you do. You appeal to God and his righteousness rather than to the laws of the land. And you keep at it until the laws of the land are changed to conform to what you believe is right. And if the law says you may not picket or gather peaceably for purposes of protest, then you violate the law, appealing to a higher law to justify your actions. And, of course, you take the consequences.

"Taking the Consequences. There were some people in the early days of the church who were haled before the court because they would not sacrifice to the emperor. They believed emperor worship was idolatry, and that they could not affirm the Lordship of Christ and at the same time the lordship of the emperor. Many Christians were martyred because of their stand in this matter. Peter says that they must not be surprised at that treatment, and they mustn't be ashamed of it. If they

suffer because they have done wrong, that's what they can expect, and they shouldn't cry about it. But if they suffer for doing what was right and good, they must bear up under that too, and meanwhile commit their souls to a righteous Creator.

"This is true today when anyone feels it his or her duty to engage in some form of protest as a matter of conscience. If the paddy wagon comes and takes you off to jail you will have to bear up under that experience. If you had done wrong it would be an indignity; but if you have not done wrong, then it need not embarrass you. I do not think a Christian should go out of his way in order to get arrested, seeking martyrdom so he can talk about it."

In April 1965, the General Assembly, as shown by its minutes, went on record with a pronouncement entitled "Civil Disobedience: The Christian and the State." It is as follows:

"This brings us to the problem of civil disobedience: the open, non-violent and conscientious refusal to obey a law or laws, as a means of appeal to a higher law, combined with the willing acceptance of the penalty. It is an extreme demonstration of dissatisfaction with some aspect of society. It also presents in its purest form the problem of the relation of the Christian to the state.

"Paul, and the Confession of Faith as well, affirm that governments are instituted by God and should therefore be obeyed. However, the civil magistrates are also bound under their charge:

" 'To protect the person and good name of all their people in such an effectual manner as that no persons be suffered, either upon pretense of religion or infidelity, to

offer any indignity, violence, abuse or injury to any other person whatsoever.' (Westminster Confession, XXV, 3.)

"It needs no elaboration that within the province of our church, we have often kept silent, though men, because of race, have suffered 'indignity, violence, abuse, and injury.'

"It is true that within our system of government, means are provided, through the law, to present and adjudicate grievances for such injustices. Yet, when due course of civil law is denied or abridged, the Christian, for whom 'God alone is Lord of Conscience,' may validly appeal to the Higher Law, led by the inner witness of the Holy Spirit, speaking in and through the scriptures. This great ordering Word may lead him against the world, against the establishment of the civil magistrates. But he should be very cautious about taking such a lonely position and should hold it only in fear and trembling. If it leads him into civil disobedience, he should not try to justify his position before men. He has violated the law, the public standard of justice, and hence must recognize his liability to the judgment of the civil court.

"The church exists to unite men by God's grace with themselves, with God, and with their fellows—to make them whole. Therefore, it should give the support of Christian compassion to any member who, following his conscience in obedience to the Word, engages in civil disobedience.

"The methods of achieving justice which have been delineated here, while accomplishing in varying measures this end, cannot, in fact, bring to fruition our desire for unity in the bond of peace. Therefore, we as Christians are called upon to look beyond these methods to work

toward the reconciliation of all parties involved by encouraging dialogue in the spirit of Christian love."

A year later the 1966 General Assembly, in answering a number of overtures seeking its action on the above declaration, acknowledged "the unrest and disturbance within parts of the church" as a result of the declaration. However, it reaffirmed that statement and attempted to clarify its "spirit and intent," concluding with the following summation:

"The Presbyterian Church, U. S., desires at this time to reaffirm the obligation of all her obedient sons and daughters: (1) To live responsibly under the law of the land; (2) To use personal influence and ballot to enhance the rule of law so that injustice may be replaced with justice, and the full provisions of the law for justice, protection, and liberty may be enjoyed by every citizen of every community; (3) To regard civil disobedience as a measure of last resort to be employed only in circumstances of otherwise irremediable deed, and in the exercise of which the whole concept of law is not denied, but affirmed; and (4) To continue to support and regard with compassion those who practice civil disobedience when no legal recourse has been left open to them and who act in Christian conscience and allegiance to Almighty God."

These actions, positions and pronouncements by the general church, the local churches insist, violate fundamental faith and doctrines established long ago. They call attention to the Westminster Confession of Faith, which provides "Synods and councils are to handle or conclude nothing but that which is ecclesiastical; and are not to intermeddle with civil affairs which concern the commonwealth unless by way of humble petition in cases extraordinary; or by way of advice for satisfaction of

conscience, if they be thereunto required by the civil magistrate," (Ch. XXXIII, par. 4), and "It is the duty of the people to pray for magistrates, to honor their persons, to pay them tribute and other dues, to obey their lawful commands, and to be subject to their authority, for conscience' sake. Infidelity, or difference in religion, doth not make void the magistrate's just and legal authority, nor free the people from their due obedience to him; from which ecclesiastical persons are not exempted . . ." (Ch. XXV, par. 4). They also stress the applicability of certain provisions of the Book of Church Order, to wit: "The power which Christ has given his Church is wholly moral and spiritual, and constitutes the Church a kingdom and government distinct from the civil commonwealth . . ." (Ch. 1, § 1-2).

All these actions cannot be brushed aside as trivial and inconsequential. The General Assembly's declaration that foreordination was no longer necessary for Reformed theology was contrary to one of the basic tenets which have made Presbyterianism significantly different from other denominations. The General Assembly's endorsement of civil disobedience, which would allow a citizen to decide whether or not he will obey the law, is a radical venture into civil affairs. It is absolute defiance of law and order, and is the road to anarchy. Also, the General Assembly's recommendations as to what steps should be taken to secure peace in Vietnam is an entry into diplomatic and military matters beyond the church's function as delineated by its Westminster Confession of Faith and Book of Church Order.

These matters constituted a course of conduct by the highest level of the general church's government for a period continuing into 1966 when the withdrawal resolu-

tions were adopted by the local churches and the instant suits were filed. None of these departures existed when these two local churches affiliated with the general church.

As we appraise it, the foregoing evidence presented an issue for the jury to decide, whether the totality of actions of the general church amounted to a substantial abandonment of, or departure from, the original tenets of faith and practice by the general church. The jury found that they did.

4. The above rulings are controlling upon all of the enumerations of error made here.

(a) Under the rulings in Divisions 1 and 2, the trial court properly refused to grant appellants' oral motion to dismiss the petitions, asserting that the allegations concerning abandonment or departure from faith and doctrine are ecclesiastical questions exclusively within the jurisdiction of the church rather than the civil courts, and even if the courts are allowed to determine such question the plaintiffs have not shown absolute abandonment.

(b) The admission of testimony concerning departure from faith and doctrine by two of the appellees' witnesses was proper in view of the ruling in Division 1.

(c) Denial of the appellants' motions for nonsuit, based upon the ground that the appellees' admissible evidence was insufficient to sustain their actions as pleaded, and for directed verdict, upon the ground that there was no conflict in the evidence and it was shown that all ecclesiastical questions involved rested exclusively with the church, was proper under the rulings made in Divisions 1 and 3.

(d) In view of the ruling in Division 2, the trial court properly charged the jury on "substantial," rather than "absolute," as the degree or standard of abandonment of faith and doctrine by the general church they must find in order to give relief to the appellees.

We find no error in the matters enumerated as error. The judgments are therefo

Affirmed. All the Justices concur.

ON MOTION FOR REHEARING

We have carefully considered all of the contentions made by the appellants and have found them not meritorious. As to the contention that this was a matter for ecclesiastical, not civil, courts, it should be pointed out that the appellants in their answer and cross action filed in each case, specifically prayed for affirmative relief as to the property in question, thereby themselves invoking rulings by the civil court as to the matters now complained of.

The motion for rehearing is without merit, and is denied.

IN THE SUPREME COURT OF GEORGIA

PRESBYTERIAN CHURCH IN THE UNITED STATES, ET AL. vs. EASTERN HEIGHTS PRESBYTERIAN CHURCH	Case Number 24366
PRESBYTERIAN CHURCH IN THE UNITED STATES, ET AL. vs. MARY ELIZABETH BLUE HULL MEMORIAL PRESBYTERIAN CHURCH	Case Number 24367

Motion for Rehearing

NOW COME, Appellants in the above stated case and within the time allowed by law move for a rehearing and reversal of the decision rendered by this Court on January 18, 1968. The decision of the Court herein was contrary to the contentions of Appellants, and they respectfully show to the Court that in rendering said decision the Court overlooked certain material facts in the record and certain decisions, statutes, and a provision of the Constitution of the United States of America, which are controlling as authority and which require a different judgment from that rendered; and further that the Court erroneously construed or misapplied certain provisions of law and certain controlling authorities hereinafter set forth.

PRELIMINARY STATEMENT

The decision of the Court reverses long standing case law in the State of Georgia which conformed with the First and Fourteenth Amendments to the Constitution of the United States as expressed in United States Supreme Court cases hereinafter cited. The Court's decision will have a

disastrous effect on all Protestant churches in Georgia, whether connectional such as the Presbyterian Church or congregational such as the Baptist Church. It will end the separation of Church and State, a cornerstone of American liberty.

If the Court's decision stands, any member of any Protestant church can create a jury issue out of any action of the Church in perfecting or explaining or acting upon its doctrine, simply by alleging that the action of the church amounts to a substantial departure from what the church believed when he first became a member, and if the jury agrees with the disgruntled member of the church, the property can be delivered to his possession.

The effect of the decision is to destroy the free exercise of religion by religious bodies in Georgia and to impose the supervisory power of the Court on all actions of the Church that any member feels might constitute a substantial departure from the faith and doctrine of the church.

Appellants submit that not only is the Court's decision in error as to the law but that the practical application of its new standard of "substantial" deviation is incapable of definition that would be understood by a jury on a uniform basis. It reduces the question of what a church believes and whether or not it has substantially deviated from those beliefs, to the opinion of a jury of twelve citizens who at best are ill-prepared to decide the same.

When the judicial arm of the State, such as a jury, is allowed to decide such totally ecclesiastical matters, the separation between Church and State is destroyed. As Mr. Justice Black said in *Everson* v. *Board of Education*, 330 U.S. 1 (1947), at page 16:

> "Neither a state nor the Federal Government can, openly or secretly, participate in the affairs of any religious organizations or groups and *vice versa*. In the words of Jefferson, the clause against establishment of religion by law was intended to erect 'a wall of separation between Church and State'." [Citation omitted].

To allow the State, through its judiciary, to enter into church disputes is to violate the freedom of religion clause of the First Amendment (made applicable to the states by the Fourteenth Amendment) by taking from the church its constitutional right to decide purely ecclesiastical matters and giving that right to the courts. Surely no such result was intended by the framers of the First Amendment.

GROUNDS FOR REHEARING

1. The judgment of this Court which specifically overrules its older case of *Mack* v. *Kime*, 129 Ga. 1 (58 S.E. 184), which older case had adopted the interpretation by the Supreme Court of the United States of the First and Fourteenth Amendments to the Constitution of the United States as stated in *Watson* v. *Jones*, 80 U.S. 679, contravened the First and Fourteenth Amendments to the Constitution of the United States in that it denied to Appellants their right to free exercise of religion. Prior to this decision under the Georgia doctrine of stare decisis set forth in Ga. Code Section 6-1611, Appellants had a right to expect that the interpretation of the First Amendment to the Constitution of the United States by the Supreme Court of the United States would be applied by the Supreme Court of the State of Georgia in considering this case, as stated in *Watson* v. *Jones*, supra. By overruling *Mack* v. *Kime*, supra, this Court has denied Appellants the equal protection of the laws and the free exercise of religion guaranteed to them by the First and Fourteenth Amend-

ments to the Constitution of the United States by refusing to apply to the facts of this case the United States Supreme Court's interpretation of the First and Fourteenth Amendments of the Constitution.

2. The relief sought by the plaintiffs in the Court below would contravene the First and Fourteenth Amendments to the Constitution of the United States of America as interpreted by the United States Supreme Court in *Watson* v. *Jones*, 80 U.S. 679 and *Kreshik* v. *St. Nicholas Cathedral*, 363 U.S. 190, in that Appellees ask the State of Georgia, acting through its judiciary, to interfere with the free exercise of religion and deny the separation of Church and State, in that the Appellees ask the Superior Court of Chatham County, Georgia, to prevent the free functioning of the ecclesiastical government of the Presbyterian Church in the United States.

The case of *Kreshik* v. *St. Nicholas Cathedral*, *supra*, involved a dispute between the Russian Mother Church and its American offspring over the right to use and occupy St. Nicholas Cathedral in New York City. The matter first reached the United States Supreme Court in *Kedroff* v. *St. Nicholas Cathedral of the Russian Orthodox Church of North America*, 344 U.S. 94.

It was clear that prior to the Bolshevik Revolution the Russian Orthodox Church was an hierarchial church with unquestioned paramount jurisdiction in the governing body in Russia over the American branch of the church. A New York State Legislature undertook to transfer the control of the New York churches of the Russian Orthodox religion from the Patriarch in Moscow to the governing authorities of the Russian Church in America. The United States Supreme Court struck down New York State's attempt to deliver possession of the Cathedral to the American branch of the church.

After the case was reversed the New York Court of Appeals ordered a retrial of the question of the right of the American branch of the church to the use and occupancy of the cathedral on a common law issue. After the trial the New York Court of Appeals directed the entry of judgment against the Patriarch in Moscow holding that by reason of the domination—found by that Court to be the fact—of the Patriarch by the secular authority of U.S.S.R., his appointees could not under the common law of New York validly exercise the right to occupy the cathedral. The United States Supreme Court held that it made no difference that the State in the *Kreshik* case acted solely through its judicial branch, for whether legislative or judicial, it was still the application of State power and thus the judicial principles ruled on in the *Kedroff* dispute forbid the judiciary as well as the legislature of a state to interfere with the free exercise of religion.

In the *Kedroff* case Mr. Justice Reed, speaking of the New York law under consideration, said, beginning at page 119:

> "It passes the control of matters strictly ecclesiastical from one church authority to another. It thus intrudes for the benefit of one segment of a church the power of the State into the forbidden area of religious freedom contrary to the principles of the First Amendment. . . .
>
> "Ours is a government which by the 'law of its being' allows no statute, State or national, that prohibits the free exercise of religion. There are occasions when civil courts must draw lines between the responsibilities of Church and State for the disposition or use of property. Even in those cases when the property right follows as an incident from decisions of the church custom or law or ecclesiastical issues, the church rule controls. This under our Constitution necessarily follows in order that there may be free exercise of religion."

Although the Court in *Kedroff* was considering a state law, which is not involved in the present case, the *Kreshik* case made this reasoning equally applicable to judicial action. The result is that a state cannot, either through its legislative *or* judicial branches, decide purely ecclesiastical matters.

3. The judgment of the Superior Court of Chatham County contravenes the First and Fourteenth Amendments to the Constitution of the United States of America as interpreted by the United States Supreme Court in *Watson* v. *Jones*, 80 U.S. 679, and *Kreshik* v. *St. Nicholas Cathedral*, 363 U.S. 190, in that the State of Georgia, acting through its judiciary, has interfered with the free exercise of religion and denied the separation of Church and State in that the Court prevents the free functioning of the ecclesiastical government of the Presbyterian Church in the United States.

4. The relief afforded Appellees by the Court below contravenes the First and Fourteenth Amendments to the Constitution of the United States of America as interpreted by the United States Supreme Court in *Watson* v. *Jones*, 80 U.S. 679, and *Kreshik* v. *St. Nicholas Cathedral*, 363 U.S. 190, in that the State of Georgia, acting through its judiciary, has interfered with the free exercise of religion and denied the separation of Church and State, in that the permanent injunction issued by the Superior Court of Chatham County, Georgia prevents the free functioning of the ecclesiastical government of the Presbyterian Church in the United States.

5. The judgment of this Court which affirms the judgment of Chatham Superior Court contravenes the First and Fourteenth Amendments to the Constitution of the United States of America as interpreted by the Supreme Court in *Watson* v. *Jones*, 80 U.S. 190, in that the State

of Georgia, acting through its judiciary, has interfered with the free exercise of religion and denied the separation of Church and State and prevents the free functioning of the ecclesiastical government of the Presbyterian Church in the United States.

6. The Court erred in the first division of its Decision by holding that the actions of the General Church constituted a diversion of the church property from the doctrine or purpose to which it was originally devoted, for the following reasons:

(a) None of the actions of the General Church complained of by Appellees in any way affected or diverted the local church properties of Appellee churches. The actions of the General Church merely constituted an expression of the opinion of the General Assembly or the Commission of the church involved and were in no way binding upon local church members or the use of local church properties.

For example, the Amendment allowing the election of women elders did not require the local churches to do so but only allowed them to elect women elders if a majority of the local congregations so desired.

(b) The Court erred in applying Georgia Code 22-408 (page 11 of the Decision) to the facts in this case because the facts do not in any instance show that the properties involved have been diverted by any action of the General Church. The said Code section is a direct outgrowth of *Bates* v. *Houston*, 66 Ga. 198, 202, which involved a congregational church and in which the property was being directly affected by the actions complained of.

If the activities of the General Church had been such that the use of the local church properties or the worship required in the local church properties had been substan-

tially changed then the reasoning advanced by the Court might be more tenable. But this is not the case. The local churches were not required to elect women elders, they were not required to change their beliefs on preordination, they were not required to buy the literature with which they were dissatisfied, and they certainly were not required to become involved in the civil rights activities of the church.

At no time were the local properties diverted from the trust.

(c) The Court erred in apparently attempting to distinguish *Sapp* v. *Calloway*, 210 Ga. 277 (79 S.E.2d 532), on page 13 of the Decision, by citing the part of the Sapp case which requires courts to adhere to the decisions of constituted tribunals within the church and then stating that the Administrative Commission appointed by the Savannah Presbytery made no decision on abandonment of tenets or faith.

If the *Sapp* case is good law, and we believe it is excellent law as laid down by this Court in a full bench decision, then the actions of the General Assembly, being the highest tribunal within the church, are controlling upon the Court. Therefore, the activities of the General Assembly about which Appellees complain, are binding upon the civil courts provided that these actions were taken under the constituted by-laws and constitution of the General Church. There is no contention that these actions were outside the procedural laws of the church.

The *Sapp* case is actually at odds with the part of this Court's Decision which would allow a jury to consider ecclesiastical questions and although this Court overruled a portion of *Mack* v. *Kime*, supra, it has not overruled *Sapp* v. *Calloway*, supra, which remains controlling case law in Georgia.

That portion of *Sapp* v. *Calloway, et al.*, which states: "The Church acting through a majority of its members, settled this issue of doctrine and faith, viz., that a labor union was an oath bound secret society. Whether good or bad, true or false, neither the Court nor jury had a right to pass on the question of whether or not a labor union is an oath-bound secret society or not. Following the settled principles of law, the Courts of this State and of the United States, have consistently adhered to the sound and salutary rule that civil courts have no power or authority to interfere in the internal affairs of a religious organization, concerning doctrines of faith or belief. *Stewart* v. *Jarriel*, 206 Ga. 855. The traditional American doctrine of freedom of religion and separation of Church and State carries with it freedom of the church from having its doctrines and beliefs defined, interpreted, or censored by civil courts" is contrary to the Decision in this case.

(d) That portion of the Decision on page 13 which reads, "furthermore, the local churches were not required to seek an adjudication of such issue within the framework of the General Church because the diversions complained of had already occurred and the local churches had withdrawn and severed their connection with it." is an erroneous application of the general law and the laws of the Presbyterian Church because it would not require a person aggrieved of a decision of a lower judicatory within the church structure to appeal it to the higher judicatories prior to taking the matter to the civil courts. Until such time as it can be shown that the persons withdrawing from the General Church and appropriating the local properties, have exhausted their remedies within the church structure, they have no right to apply to the civil courts for redress. 76 C.J.S. Section 86, page 878. "It is generally held that a member, minister, or officer of a church aggrieved by a church decision or action must exhaust his

remedies within the church before he may resort to the courts for relief, but this rule is inapplicable where there is no higher church body from whom redress may be obtained."

Appellees did not attempt to have the General Assembly reverse its actions or activities by appealing either through the lower judicatories or directly to the General Assembly, but they took it upon themselves to pass judgment on the actions of the General Church and use this as their basis for withdrawal. The Court's decision now has the effect of destroying the appellate procedure within the church structure and allows a disgruntled person to take a grievance directly to the civil courts at any stage he desires.

7. The Court has erred in reversing that portion of *Mack* v. *Kime*, supra, which requires absolute abandonment before a civil court can become involved and in substituting "substantial abandonment", not only for the constitutional reasons hereinbefore cited in this motion but because the standard of "substantial abandonment" is incapable of a definition that can be understood on a uniform basis by any jury. What is substantial to one person may not be to another. It is also impossible for a person in determining whether or not an act is substantial to divorce from his mind his personal prejudices regarding the same.

This is probably one of the fundamental reasons why the Supreme Court of Georgia in *Mack* v. *Kime*, supra, and the Supreme Court of the United States in *Watson* v. *Jones*, 80 U.S. 679, have refused to allow the courts to intrude in religious affairs.

The effect of the new rule laid down by this Court is to make a jury question of any issue involving church

doctrine or application of that doctrine and to require the jury to determine first what the church believes and secondly whether there has been a substantial deviation from those beliefs. How is it possible for a jury of twelve persons to enter the often confusing quagmire of church doctrine, the vagueness of which probably brought the matter to Court in the first place, and exercise a judgment that would be superior to that of the church tribunals? There is no way, without destroying the doctrine of separation of Church and State in the process.

(e) The citation from 76 C.J.S. 849, on pages 14 and 15 of the Decision again emphasizes what has been argued previously in this motion. The citation refers to the situation where a local congregation is required to use the local property for the propagation of doctrines in conflict with the fundamental teachings of the denomination. Without repeating the argument hereinbefore cited, the actions taken by the General Church of which Appellees complain, do not in any instance ". . . require the property . . ." (76 C.J.S. 849) to be used for the propagation of doctrines in conflict with what the local congregation feels are the fundamental teachings of the denomination.

For the above reason, it is respectfully submitted that the citation submitted from C.J.S. in support of the contentions in the Decision is not in point.

It should be emphasized here, that the complaints of Appellees do not involve changes of the constitution or amendments to the Confession of Faith except in the case of women elders. The actions complained of involved resolutions passed by the General Assembly and activities of certain commissions of the church.

(f) It is noted that on page 16 of the Court's Decision, that Code Section 22-406 is dismissed on the grounds

that it only governs controversies between the two factions of a local church, although the Code Section is not limited to local church disputes. If this is the case, then Code Section 22-408 which is relied on by the Court on page 11 of the Decision and which comes out of the same decision of this Court in *Bates* v. *Houston*, supra, should be dismissed as it too involves a dispute between two factions of a local church.

8. The Court has erroneously construed and misapplied the evidence beginning at the bottom of page 16 of the Decision as the evidence does not support the new criteria of "substantial abandonment or departure" for the following reasons:

(a) The Court cites a resolution of the 1961 General Assembly on page 17 of the Decision by stating that the General Assembly declared ". . . that the doctrine of foreordination, as stated in the Confession of Faith, is not essential to the Reformed theology".

First, it should be noted that the declaration of the General Assembly did not in any way attempt to amend the portion of the Confession of Faith with which it was dealing but merely stated the opinion of a majority of those voting but merely stated that in their opinion it was not necessary for a member to believe that certain persons were preordained to Hell when they are born, in order to be a good Presbyterian.

There was nothing in this resolution that required any individual Presbyterian to believe it if he did not wish to do so. There was nothing in this resolution that amended the Confession of Faith as to predestination (see Westminster Confession of Faith, paragraph three, pages 36 and 37).

Looking for a moment at the substance of the resolution, there is nothing in it that contravenes basic Christian theology for the basis of belief in Jesus Christ is that all persons, no matter how evil they may be, can be saved if they will follow Christ.

(b) The same reasoning can be applied to the actions of the General Assembly regarding an amendment to the constitution permitting voluntary Bible reading and prayer in public schools, the National Council of Churches for Christ and their Mississippi Project, and certain statements made by the General Assembly, concerning Viet Nam and the civil rights movement.

In each instance, the action of the General Assembly only amounted to an expression of that particular General Assembly and could just as easily have been amended or modified or rejected by a subsequent General Assembly. None of these actions affected the use of the local church property or required adherence by local churches.

As a matter of fact, the statements cited in the Decision, beginning on page 19, which are taken from Sunday School literature, do not even constitute actions of the General Assembly but are the free expressions of the authors of those works. Add to this the fact that Appellees admitted during the trial that they were not even using the literature of which they were complaining (T. 180).

In summary, the alleged actions of the General Assembly constituted isolated instances in which opinions were expressed that were not binding upon the local congregations. The same is true of the literature of which Appellees complain.

When the vast array of doctrines and beliefs of the Presbyterian Church in the United States as set out in its Confession of Faith are compared with the complaints of

Appellees, it is difficult to understand how it can be said that they are substantial either as to the doctrines complained about or the volume of complaints.

9. The Court has overlooked *Stewart* v. *Jarriel*, 206 Ga. 855 (2) as cited in the main Brief of Appellants, which case is a full bench decision and is controlling on the question of the intervention of a civil court into ecclesiastical matters.

Although cited in the Brief, we will repeat here a brief excerpt from the Decision: "All questions relating to faith and practice of the church and of its members must belong to the church judicatories, to which the members have voluntarily subjected themselves since, when a person becomes a member of a church, he does so upon the condition of submission to its ecclesiastical jurisdiction and however much he may be dissatisfied with the exercise of that jurisdiction, he has no right to invoke the supervisory power of a civil court so long as none of his civil rights are involved. So long as a professed creed is not subversive to the peace and good order of society, it is not within the province of any department of government to settle differences in creeds or determine what ought or ought not to be a fundamental of religious belief."

This case reinforces *Sapp* v. *Calloway*, supra, and makes clear beyond all doubt that Courts of law have no right to become involved in interpreting the doctrines of a church regardless of their reasons for doing so.

Not cited in the original Brief, because it was only handed down on December 7, 1967, and has not as yet reached the advance sheets, is *Northside Baptist Church, et al.* v. *W. Kenneth Goodson, et al.*, by the United States Court of Appeals for the Fifth Circuit as case number 24421. (Because the case is not yet generally available a xerox copy is attached to this Motion) (R. 784-789).

Of interest to the point involved in this case is the statement on page 7 of the Decision as follows: "State and Federal courts alike are obliged to uphold the laws and rules of Church governing bodies against dissident factions. *Watson* v. *Jones*, 1871, 80 U.S. (13 Wall.) 679. *Judicial tribunals, as arms of government of the government, must avoid interference* with established church policies and government." [Emphasis added]. The Decision is well worth reading in its entirety.

CONCLUSION

As we understand the Court's Decision, it now makes a jury question out of any action of a church in amending its tenets or in expressing itself or taking action upon the same if a dissident member feels that such action by the church amounts to a substantial deviation from a doctrine or doctrines that existed when his local church joined the General Church.

In each instance, the jury would be required to find first what the church believed, second, whether or not the church has deviated from that belief, and, thirdly, whether or not there was a "substantial" deviation. In the process of these determinations the opinion of the jury would be completely substituted for that of the church. To allow this substitution is to violate the freedom of religion clause of the First Amendment to the United States Constitution (made applicable to the states by the Fourteenth Amendment).

The rationale that would allow a jury to become involved in such questions on the grounds of substantial deviation from doctrine, and the alleged benefits that would flow from such rights, is by far overshadowed by the destruction of the doctrine of separation of Church

and State and the highly impractical procedure of allowing a jury to determine ecclesiastical matters. For these reasons and the more specific reasons set out hereinbefore, we earnestly and respectfully request this Court to review and reverse its Decision, to reinstate the principles of *Watson* v. *Jones* which are expressed through *Mack* v. *Kime, Sapp* v. *Calloway,* and *Stewart* v. *Jarriel.*

The preservation of the connectional system of Protestant churches in Georgia is dependent upon this reversal.

Respectfully submitted,

/s/ Frank S. Cheatham, Jr.
Attorney for Appellants

32 East Bay Street
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A copy of the foregoing Motion for Rehearing was mailed to counsel for Appellees, namely, Richard E. Cowan and Owen H. Page, to their regular mailing addresses this 26th day of January, 1968.

/s/ Frank S. Cheatham, Jr.

APPENDIX B

Excerpts from Minutes of 1966 General Assembly

"We call upon the members of our congregation to labor diligently as committed Christians within their communities to the end that the justice, protection and liberty inherent in our system of law are applied and made available to all citizens in those communities, both in spirit and in letter. We recognize that every system of law however excellent, is created, administered, and enforced by sinful human beings. In many communities throughout the area served by our Church, there have prevailed social mores and time-honored customs that have produced laws

which do not express the best in our fundamental concept of justice. There have been instances where those charged with administering the law have enforced it inconsistently within their communities, with the result that not only have there been occasions of injustice, but also that this injustice has had the quiet sanction of the law. We believe that these practices erode the whole concept of the rule of law, and subvert the system we support from its proper and legal effect. In these sorrowful instances, some of those more sensitive to injustice who have been deprived of the full benefits of the law have frequently been unable to secure the redress of their rights through the exercise of the law. The same circumstances that deprived these individuals of their rights have served to deny or frustrate their lawful petitions for the redress of those rights, depriving them also of that ultimate means of redress within our systems, a free ballot. Under this situation, an appeal was made by some to the larger community through the practice of civil disobedience as a final resort, other peaceful means having been deprived them. In these acts, those who were civilly disobedient accepted the consequences the law imposed upon them for its violation. Only under such sorrowful circumstances can civil disobedience be countenanced. This measure can be justified only under most pressing necessity. But when such a situation prevails the church may properly support those using this means to obtain for themselves those unalienable rights with which all men are endowed by their Creator. The Church can take the above position upon the Biblical ground which demands that every man's primary allegiance must be to God Almighty. Her proclamation through the ages has been, and should continue to be, that God alone is Lord, not only over every individual conscience, but also over every human institution." (R. 157-159).

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1968

No. [redacted] 71

PRESBYTERIAN CHURCH IN THE UNITED STATES ET AL.,

Petitioners

v.

MARY ELIZABETH BLUE HULL MEMORIAL PRESBYTERIAN CHURCH,

Respondent.

and

PRESBYTERIAN CHURCH IN THE UNITED STATES ET AL.,

Petitioners

v.

EASTERN HEIGHTS PRESBYTERIAN CHURCH ET AL.,

Respondents.

On Petition for a Writ of Certiorari to the Supreme Court of Georgia

MOTION OF WILLIAM P. THOMPSON, STATED CLERK OF THE GENERAL ASSEMBLY OF THE UNITED PRESBYTERIAN CHURCH IN THE UNITED STATES OF AMERICA, ET AL., FOR LEAVE TO FILE BRIEF *AMICI CURIAE*.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1967

No. 1380

PRESBYTERIAN CHURCH IN THE UNITED STATES ET AL.,

Petitioners

v.

MARY ELIZABETH BLUE HULL MEMORIAL PRESBYTERIAN CHURCH,

Respondent.

and

PRESBYTERIAN CHURCH IN THE UNITED STATES ET AL.,

Petitioners

v.

EASTERN HEIGHTS PRESBYTERIAN CHURCH, ET AL.,

Respondents

On Petition for a Writ of Certiorari to the Supreme Court of Georgia

MOTION OF WILLIAM P. THOMPSON, STATED CLERK OF THE GENERAL ASSEMBLY OF THE

UNITED PRESBYTERIAN CHURCH IN THE UNITED STATES OF AMERICA; REV. H. SHAW SCATES, STATED CLERK OF THE GENERAL ASSEMBLY OF THE CUMBERLAND PRESBYTERIAN CHURCH; AND REV. MARION DE VELDER, GENERAL SECRETARY OF THE GENERAL SYNOD OF THE REFORMED CHURCH IN AMERICA, FOR LEAVE TO FILE A BRIEF *AMICI CURIAE*.

William P. Thompson, a member of and the Stated Clerk of the General Assembly of The United Presbyterian Church in the United States of America, and the Rev. H. Shaw Scates, a member of and the Stated Clerk of the General Assembly of the Cumberland Presbyterian Church, and the Rev. Marion de Velder, a member of and the General Secretary of the General Synod of The Reformed Church in America, respectfully move for leave to file the attached brief *amici curiae* in support of the Petition for a Writ of Certiorari. Counsel for the Petitioners have consented to the filing of a brief, but counsel for the Respondents in both cases have refused such consent.

William P. Thompson is the Stated Clerk of the General Assembly of The United Presbyterian Church in the United States of America, and, by virtue of his office, is the continuing executive officer of the said General Assembly. He represents an ecclesiastical body of approximately 3,275,000 communicant members.

The Rev. H. Shaw Scates is the Stated Clerk of the General Assembly of The Cumberland Presbyterian Church, and, by virtue of his office, is the continuing executive officer of said General Assembly. He represents an ecclesiastical body of approximately 76,000 communicant members.

The Rev. Marion de Velder is the General Secretary of the General Synod of The Reformed Church in America,

and, by virtue of his office, is the continuing executive officer of said General Synod. He represents an ecclesiastical body of approximately 232,000 communicant members.

The cases before this Court are of great importance to The United Presbyterian Church in the United States of America, The Cumberland Presbyterian Church, and The Reformed Church in America, and of equal importance to any church adhering to an hierarchical form of representative government. The forms of government of the applicants' churches are similar to the form of hierarchical representative government of the Petitioners, The Presbyterian Church in the United States.

The decision of the Supreme Court of Georgia in the cases before this Court seriously offends the First Amendment as included in the Fourteenth Amendment of the United States Constitution, as explained in *Kedroff* v. *St. Nicholas Cathedral,* 344 U.S. 94 (1952), and *Kreshik* v. *St. Nicholas Cathedral,* 363 U.S. 190 (1960). *Kedroff* reaffirmed the older leading case of *Watson* v. *Jones,* 13 Wall. 679 (1871), and raised it to constitutional stature.

The great importance of the decision of the Supreme Court of Georgia is that it holds that a court sitting with a jury may decide ecclesiastical matters. Thus, anyone having a complaint on an ecclesiastical action may seek the judgment of a civil judge and jury, notwithstanding that the church concerned has a constitution establishing a form of government and tribunals requiring determination by it of ecclesiastical questions.

The importance of the decision of the Supreme Court of Georgia is further emphasized by the fact that the decision reversed the law of Georgia as it existed theretofore. The decision expressly overruled the leading and controlling Georgia Supreme Court case of *Mack* v. *Kime,* 129 Ga. 1 (1907). The *Mack* case held that if a matter relates to creed, doctrine or teaching, the judgment of the

church tribunal is absolutely conclusive on the civil courts, whether, in the opinion of the judge of such courts, the decision appears to be right or wrong. 129 Ga. at 18. The *Mack* case accepted the doctrines of *Watson* v. *Jones* and the law of Georgia as stated in the *Mack* case was reaffirmed in the later cases of *Stewart* v. *Jarriel*, 206 Ga. 855 (1950) and *Sapp* v. *Callaway*, 208 Ga. 805 (1952).

Thus, the Supreme Court of Georgia cavalierly, without warning, reversed the law of Georgia as it existed to the time of the decision in the cases before this Court, an event that could not and should not have been anticipated in this day and age when the principle involved was not only the law of Georgia but the law of the United States.

The importance of the decision of the Supreme Court of Georgia is practical and not academic. The decision has been and is being used as the support of some dissenting elements in The United Presbyterian Church in the United States of America to seek State determination of ecclesiastical questions affecting said Church. Pending cases are *Presbytery of Riverside* v. *Superior Court in and for the County of Riverside, and Blackstone et al. Real Parties in Interest*, in the Court of Appeals, Fourth Appellate District—Division Two, State of California, Docket No. 4 Civ. 9092; and *Presbytery of Seattle* v. *Rohrbaugh et al.*, in the Superior Court of the State of Washington for King County, Docket No. 691249.

Movants desire to file the attached brief in order to bring these matters to the attention of the Court, since Movants believe that their consideration is essential to a full presentation of the constitutional issues involved in these cases.

WHEREFORE, it is respectfully requested that this Motion for Leave to File a Brief *amici curiae* be granted and the views expressed in that brief be considered by

this Court in resolving the question presented by the Petitioners for the writ.

Respectfully submitted,

GEORGE WILSON MCKEAG,
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MORGAN, LEWIS & BOCKIUS,
Of counsel.

May 9, 1968.

CERTIFICATE OF SERVICE

I, George Wilson McKeag, counsel for movants, hereby certify that I have served a copy of the foregoing Motion and attached brief by depositing a copy of the same in the United States mail, properly stamped and addressed to each of the following:

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Savannah, Georgia 31401

Owen H. Page, Esq.
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Richard T. Cowan, Esq. and
Frank B. Zeigler, Esq.
24 East Oglethorpe Avenue
Savannah, Georgia 31401

This 9th day of May, 1968.

GEORGE WILSON MCKEAG

IN THE

Supreme Court of the United States

OCTOBER TERM, 1967

No. 1380

PRESBYTERIAN CHURCH IN THE UNITED STATES ET AL.,

Petitioners

v.

MARY ELIZABETH BLUE HULL MEMORIAL PRESBYTERIAN CHURCH,

Respondent.

and

PRESBYTERIAN CHURCH IN THE UNITED STATES ET AL.,

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EASTERN HEIGHTS PRESBYTERIAN CHURCH,

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On Petition for a Writ of Certiorari to the Supreme Court of Georgia

BRIEF OF WILLIAM P. THOMPSON, STATED CLERK OF THE GENERAL ASSEMBLY OF THE PRES-

BYTERIAN CHURCH IN THE UNITED STATES OF AMERICA; REV. H. SHAW SCATES, STATED CLERK OF THE GENERAL ASSEMBLY OF THE CUMBERLAND PRESBYTERIAN CHURCH; AND REV. MARION DE VELDER, GENERAL SECRETARY OF THE GENERAL SYNOD OF THE REFORMED CHURCH IN AMERICA, *AMICI CURIAE*, IN SUPPORT OF THE PETITION FOR A WRIT OF CERTIORARI.

THE STATUS OF AMICI CURIAE

William P. Thompson, a member of and the Stated Clerk of the General Assembly of The United Presbyterian Church in the United States of America (hereinafter referred to as The United Presbyterian Church); and the Rev. H. Shaw Scates, a member of and the Stated Clerk of the General Assembly of The Cumberland Presbyterian Church; and the Rev. Marion de Velder, a member of and the General Secretary of the General Synod of The Reformed Church in America represent a deep interest in the cases before this Court. They are in accord with the Petitioners in the cases before this Court and consider it important to their Churches and any church that this Court grant the Petition and on hearing reverse the decision of the Supreme Court of Georgia.

THE OPINION BELOW

The opinion of the Supreme Court of Georgia is printed in the Appendix to this Brief, *infra* pp. A1-A20. The opinion is reported in 224 Ga. 61, 159 S.E. 2d 690 (1968).

ARGUMENT

I. THE GEORGIA SUPREME COURT REVERSED ITS PRIOR DECISION IN MACK v. KIME WITHOUT WARNING.

Until the decision of the Georgia Supreme Court in the cases before this Court, the law of Georgia was as stated by this Court in *Watson* v. *Jones,* 13 Wall. 679 (1871). It was so said in *Mack* v. *Kime,* 129 Ga. 1 (1907).

The Supreme Court of Georgia said in *Mack* at page 18:

> "How far the civil courts will interfere in the affairs of a religious body, where property rights are involved, is a question which has been addressed to many courts of this country. Often the controversy as to the right of property grows out of a controversy as to creed, doctrine, or teaching. While all of the rulings of the American courts cannot be said to be entirely uniform, the great weight of authority is to the effect that if a religious organization has, under its form of government, a tribunal constituted with jurisdiction to decide differences between its members as to creed, teaching, or doctrine, the civil courts will not undertake to review or revise the judgment of the church tribunal in reference to such matters. The cases which support this ruling seem to be founded upon sound reasoning, when we take into consideration the constitutional provisions which deny to Congress and the law-making powers of the different states the right to interfere in matters purely ecclesiastical. In some cases it has been said that the decisions of the church tribunals are persuasive, and not to be departed from by the civil courts, except where the decisions are clearly wrong. But the sounder rule is that laid down in those cases in which it is held

> that, if the matter relates to creed, doctrine, or teaching, the judgment of the constituted church tribunal is absolutely conclusive upon the civil courts, whether, in the opinion of the judges of such courts, the decision appears to be right or wrong. Where a right of property turns upon such a decision the civil courts will allow the property to go in that direction in which the decision of the church tribunal carries it."

The law of Georgia, as expressed in *Mack* v. *Kime* was affirmed by the much later case of *Stewart* v. *Jarriel,* 206 Ga. 855 (1950), although the latter case involved a non-hierarchical church. In *Sapp* v. *Callaway,* 208 Ga. 805 (1952), the Supreme Court of Georgia reaffirmed the existing law of Georgia, saying at page 810:

> "The traditional American doctrine of freedom of religion and separation of church and state carries with it freedom of the church from having its doctrines or beliefs defined, interpreted, or censored by civil courts. These rules and principles are stated in *Watson* v. *Jones,* 80 U.S. 679. . . ."

It is clear that until the moment of the decision of the Supreme Court of Georgia, when it reversed the law of that State, the law of Georgia was in accord with the law as announced by this Court. Hence, the Petition for writ of certiorari should be granted.

II. THE SUPREME COURT OF GEORGIA BY ITS DECISION SETS UP THE CIVIL COURT AND JURY AS ALL-POWERFUL ARCHBISHOP OVER CHURCHES, A ROLE HERETOFORE FORBIDDEN.

It is the thesis of the Georgia court that it has the right to determine whether or not the church has made a "substantial" deviation from its doctrines. (A10-A12). The Georgia court reasons that if it so finds a "substantial"

deviation, then it can find in favor of dissenters claiming property of the church.

The reasoning of the Georgia court is contrary to the law of this country as shown later. However, on this point it is well, first, to read the wise observations of District Judge Van Valkenburgh in his opinion in *Barkley* v *Hayes*, 208 Fed. 319 (W.D. Mo. 1913), *aff'd* sub nom. *Duvall* v. *Synod of Kansas*, 222 Fed. 669 (8th Cir. 1915), *aff'd* sub nom. *Shepard* v. *Barkley*, 247 U.S. 1 (1918). The judge said at page 323:

> "The Constitution of the United States and of the several states guarantees to the individual absolute independence of religious belief and worship. He need associate himself with no religious organization if he does not wish to do so, and he need remain identified with one no longer than he may desire; but when he does unite with a church, and becomes a member of that ecclesiastical body, he voluntarily surrenders his individual freedom to that extent. So long as he desires to avail himself of such a relationship, and to enjoy the privileges and benefits flowing from that association, he must conform to the laws by which it is governed. He cannot complain if its articles of faith be changed, nor if its property—in which he has no individual ownership—be transferred under constitutional forms; in such case, he has no personal or property rights which the civil courts can or should protect. Any other view would be entirely subversive of the very theory of organization. The church would be dissolved into a mere aggregation of individual views and theories. It is impossible that all men, or even many men, should exactly agree upon all the incidental details of standards or policies. It is the substance that is important; and it is essential that the power of decision in such matters should be lodged somewhere, and should be final."

It is clear that the power of decision referred to by the District Judge is the Church, not the civil court. The civil court is never the Archbishop of the Church. Hence, the civil court cannot say that the Church has deviated from its doctrines, whether substantially or otherwise. The civil court may not say what the doctrines of the Church are, or what they should be. Only the Church may say that.

The basic principle followed by this Court in *Watson* v. *Jones* and reaffirmed in *Kedroff* v. *St. Nicholas Cathedral* is summarized in one sentence, particularly appropriate to the instant case:

> *"The law knows no heresy,* and is committed to the support of no dogma, the establishment of no sect." 13 Wall. at 728, quoted, 344 U.S. at 114. (Emphasis added.)

III. THE DECISION OF THE GEORGIA SUPREME COURT OFFENDS THE CONSTITUTION OF THE UNITED STATES.

The Georgia court stated as the grounds of its decision that the Presbyterian Church in the United States "substantially" departed from its doctrines, and therefore lost jurisdiction over its constituent churches. The grounds of alleged departure are:

1. The declaration of the 1961 General Assembly of the Presbyterian Church in the United States that the doctrine of foreordination, as stated in the Confession of Faith, is not essential to Reformed theology. (A12).

This alleged ground ought to be characterized and evaluated exactly as was stated in the Motion for Rehearing to the Georgia court:

> "It should be noted that the declaration of the General Assembly did not in any way attempt to amend the portion of the Confession of Faith with

which it was dealing but merely stated the opinion of a majority of those voting that in their opinion it was not necessary for a member to believe that certain persons were preordained to Hell when they are born, in order to be a good Presbyterian . . . , for the basis of belief in Jesus Christ is that all persons, no matter how evil they may be, can be saved if they follow Christ."

It may be blunt to say, but respectfully, that the Georgia court or any court and jury should not decide the basis of one's salvation. It seems that this illustrates the odd position of the Georgia court in the cases before this Court.

2. Refusal of the General Assembly of the Presbyterian Church in the United States to endorse a proposal of a presbytery to seek constitutional permission for voluntary Bible reading and prayer in the public schools. (A12).

3. The involvement of the Church, through the National Council of Churches for Christ, in the Mississippi Delta Project, a civil rights movement. (A12).

4. Approval by the Church of ordination of women as ministers and ruling elders. (A12).

5. Approval by the Church of pronouncements on the Vietnam conflict. (A13).

6. Endorsement by the Church of the civil rights movement. (A13).

7. Statements made in the literature of the Church on the subject of civil disobedience. (A13-A14).

Not a single ground can be said to be a change in the Constitution of the Presbyterian Church in the United States. The nearest any comes to such is the recognition of women as being eligible for ordination as ministers and elders. However, the Constitution of the Presbyterian

Church in the United States does not specify the sex of its ministers and elders, and never has.

It is noted that two of the grounds deal with the subject of civil rights, a subject a Church not only ought to discuss, but a subject that is so obvious it should not be mentioned by way of criticism of the Church. It is here noted that, in its primitive form, civil rights were the basis of the stand taken by The United Presbyterian Church in the Civil War Period which gave rise to the leading case of *Watson* v. *Jones,* 13 Wall. 679 (1871).

The matters here involved concern creed, doctrine and teaching, and raise issues of ecclesiastical authority of the governing body of a church. The right of civil courts to pass upon such matters is the same issue that has been settled by the decisions of this Court. The thesis of the Georgia Supreme Court that it may review the actions of The Presbyterian Church in the United States and decide whether they are right or wrong offends the First Amendment as included in the Fourteenth Amendment of the Constitution of the United States. This was decided by this Court in *Kedroff* v. *St. Nicholas Cathedral,* 344 U. S. 94 (1952), and *Kreshik* v. *St. Nicholas Cathedral,* 363 U. S. 190 (1960).

To review, *Kedroff* held a New York statute unconstitutional, in that it provided for a determination of the occupancy of the Cathedral in New York differently than by appointment of the ecclesiastical authority, namely the Patriarch in Moscow.

After *Kedroff,* it was thought that the decision of this Court could be circumvented. That is, it was thought that the case could be put on common law grounds by showing that the decision of the Patriarch in Moscow was not freely exercised. The case was thus pursued. See 306 N. Y. 38, and 7 N. Y. 2d 191. The New York Court of Appeals again found against the appointee of the Patriarch in Moscow, and found as a fact that the ecclesiastical authority of the Patriarch was not freely exercised.

This Court in *Kreshik* again reversed the New York Court of Appeals, saying at page 191:

> "it is not of moment that the State has here acted solely through its judicial branch, for whether legislative or judicial, it is still the application of state power we are asked to scrutinize."

IV. THE DECISION OF THE GEORGIA SUPREME COURT IS CONTRARY TO OTHER MODERN STATE COURT DECISIONS AFFECTING THE PETITIONERS.

Similar issues were present in recent state court decisions affecting the Presbyterian Church in the United States and were resolved in favor of the Church. See *St. John's Presbytery* v. *Central Presbyterian Church of St. Petersburg*, 102 So. 2d 714 (Fla. 1958), and *Bramlett* v. *Young*, 229 S.C. 519 (1956). These cases followed the decision of this Court in *Watson* v. *Jones*, 13 Wall. 679 (1871).

CONCLUSION

It is therefore requested that this Court grant the Petition for writ of certiorari, and on consideration thereof reverse the decision of the Georgia Supreme Court.

Respectfully submitted,

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May 9, 1968.

OPINION OF THE SUPREME COURT OF GEORGIA

PRESBYTERIAN CHURCH IN THE UNITED STATES et al. v. EASTERN HEIGHTS PRESBYTERIAN CHURCH.

PRESBYTERIAN CHURCH IN THE UNITED STATES et al. v. MARY ELIZABETH BLUE HULL MEMORIAL PRESBYTERIAN CHURCH.

Nos. 24366 and 24367

ARGUED NOVEMBER 13, 1967—DECIDED JANUARY 18, 1968—REHEARING DENIED FEBRUARY 12, 1968.

GRICE, Justice. The issue here is whether two local Presbyterian churches, in withdrawing from the general organization, are entitled to the local church properties. It stems from claims by the local churches that the general church has abandoned the fundamental tenets of faith and practice existing when the local churches affiliated with it.

This litigation began on May 26, 1966, when Mary Elizabeth Blue Hull Memorial Presbyterian Church and Eastern Heights Presbyterian Church, incorporated nonprofit religious institutions located in Savannah, filed in the Superior Court of Chatham County petitions against the Presbyterian Church in the United States (herein referred to as "the general church") and the named chairman of the Administrative Commission of its Presbytery of Savannah. Each of the petitions sought injunctive relief against the general church organization interfering with the local churches' exclusive use and control of the local church properties. The defendants denied the material allegations of the petitions and sought affirmative equitable relief.

The two cases were tried together, resulting in verdicts and judgments in favor of the local churches.

The enumerations of error complain of the trial court's denial of motions to dismiss the petitions, for nonsuit and for directed verdict, the admission of certain evidence, and also one portion of the charge to the jury.

The allegations of the petition of Eastern Heights and its trustees, insofar as necessary to recite here, are those which follow.

The congregation, on April 17, 1966, adopted a resolution, a copy of which was transmitted to the general church and its Savannah Presbytery. This resolution affirmed the congregation's religious faith and beliefs as originally adopted by the general church in 1861, declared that the general church had violated its constitution and departed from the faith and practice existing when Eastern Heights affiliated with it, and declared that Eastern Heights severed all connection with the general church and was henceforth an autonomous Presbyterian church. This resolution recited that the violations and departures of the general church from its original tenets of faith and practice included the following: ordaining of women as ministers and ruling elders, making pronouncements and recommendations concerning civil, economic, social and political matters, giving support to the removal of Bible reading and prayers by children in the public schools, adopting certain Sunday School literature and teaching neo-orthodoxy alien to the Confession of Faith and Catechisms, as originally adopted by the general church, and causing all members to remain in the National Council of Churches of Christ and willingly accepting its leadership which advocated named practices, such as the subverting of parental authority, civil disobedience and intermeddling in civil affairs.

The petition alleged that the general church has also made pronouncements in matters involving international issues such as the Vietnam conflict and has disseminated publications denying the Holy Trinity and violating the moral and ethical standards of the faith.

It averred that all of the foregoing constitute a substantial, fundamental and radical departure from the faith and practice of the general church and have occurred since the affiliation of Eastern Heights with it in 1930.

The petition further recites that on May 19, 1966, an Administrative Commission of the general church's Presbytery of Savannah took certain action by a resolution which, in material part, recited as follows: The Presbytery had received letters from the named ministers of Eastern Heights and Hull Memorial in which each renounced the jurisdiction or authority over him of the general church and its Savannah Presbytery; that each had thus removed himself from office and membership in the general church and was no longer entitled to perform with ordained authority any act in it; that by the resolutions of Eastern Heights and Hull Memorial of April 17, 1966, all elders of both churches, except one not contacted and another who dissented, had removed themselves from office and membership in the general church; that they no longer had any authority to exercise office derived from the general church; that since there was but one ruling elder in each of the two churches and one ruling elder does not constitute a Session so as to exercise jurisdiction over the two local churches, the Commission "will secure Ministerial leadership and provide regular services of worship in the sanctuaries of [the two churches] for those members who wish to continue their membership in and communion with [the general church], and will take such further action as shall be necessary in accordance with the Constitution of [the general church]."

The petition also averred that by such Administrative Commission action, the defendants threaten to trespass upon the property of Eastern Heights by assuming original jurisdiction over it, denying it the right to exercise authority over its affairs and imposing other ministerial leadership upon it for the purposes of holding regular worship services; that the removal of the regular minister

and the imposition of another would disrupt the good order and peace of its worship services; that the threatened acts of trespass would destroy the quiet and peaceful possession it now enjoys and would have a demoralizing effect upon it; that unless the threatened trespass is enjoined Eastern Heights will be irreparably damaged, the peaceful utility and enjoyment of its property will be adversely affected, and the dignity and sanctity of the church edifice will be intruded upon.

The plaintiffs declare that they are seeking to protect their faith and avoid one in conflict with that in existence when they affiliated with the general church, and that they should have title to the church property quieted and confirmed in them to preserve the trust. They allege that Eastern Heights is vested with title and ownership and now enjoys quiet and peaceful possession of described real property, conveyed to it or to trustees of it.

The prayers of the petition were for temporary and permanent injunction against the threatened acts of trespass hereinabove described and other relief.

The allegations of the petition of Hull Memorial are similar in substance to those of Eastern Heights. Those necessary to recite are as follows: that it owns described real estate, one portion of which was acquired in 1914 by deed reciting that it was to be used for a place of worship by a church of the Presbyterian denomination known as the Mary Elizabeth Blue Hull Memorial Presbyterian Church; that it became affiliated with the general church in 1890; that no moneys have ever been contributed to it by the general church or by its Savannah Presbytery; that since it acquired its property the general church has made stated revolutionary, fundamental, unlawful, and radical diversion from the Presbyterian faith; and that in order to remain true to the Presbyterian doctrines and practices in force when it affiliated with the general church and acquired its property, it withdrew from the general church

on April 17, 1966. The petition prayed for the same relief sought by Eastern Heights and in addition asked that title to the local church property be adjudged in it.

To each of these petitions the defendants interposed similar answers and cross bills which denied the material allegations. They made allegations which, insofar as necessary to relate here, follow. Prior to the adoption of their withdrawal resolutions the members and ruling elders of Eastern Heights and Hull Memorial were members of the general church, which is representative in form, and were subject to its constitution and laws. Because of such withdrawal by the two local churches the Administrative Commission took the action recounted in its resolution of May 19, 1966, referred to above. Its decision was with full authority of the Savannah Presbytery, was made known to the plaintiffs, but was not appealed from and therefore became final and binding on the parties and the court. The defendants have a right of possession to the properties but the plaintiffs have appropriated them to the use of the two local churches, in violation of law and the rules of the church. This constitutes a continuing trespass which must be enjoined or the defendants will be irreparably injured, and the peace and dignity of their right of possession of the properties for religious worship for those loyal to the general church will be impaired. Each answer and cross action prayed, among other matters, for injunctive relief against the local churches' appropriation of the local properties and for decree that the Savannah Presbytery of the general church has an implied trust over such properties as the rightful representative of the general church for the use and benefit of those members adhering to the doctrines and regulations of the general church.

Upon the trial the evidence took a broad range, both oral and documentary. The highlights of the history of the Presbyterian denomination were recited by theologians. They traced the beginning more than four hundred years

ago, the spread of the movement to the American colonies in the eighteenth century, the establishment of the Presbyterian Church in the United States of America, the withdrawal from it in 1861 by churches in the southern portion of the United States, and the organization in Augusta, Georgia, of the defendant Presbyterian Church in the United States, sometimes referred to as "The Southern Presbyterian Church." They enumerated the bases of faith and practice of this organization when formed in 1861 as the Old and New Testaments of the Holy Bible, the Westminster Confession of Faith, and the Larger and Shorter Catechisms.

They stated that the constitution of the general church is composed of such Confession of Faith, the two Catechisms, the Book of Church Order, and the Directory of Worship. They explained that the government of the general church is representative or connective, and not congregational. They recited that the structure of this government, in ascending order, is as follows: the Session of each local church which is made up of its ruling elders; the Presbytery which is constituted of several Sessions in a geographical area; the Synod which is ordinarily composed of the Presbyteries within a state; and the General Assembly which is formed by representatives from the entire organization. They related that these Sessions, Presbyteries, Synods, and the General Assembly also constitute the judicial system of the church organization.

The evidence was that the constitution of the general church contains no provision governing the situation here. There was considerable testimony as to whether the general church had over the years in various controversies recognized local ownership of church property. It was shown that the only provision in its constitution for a Presbytery to take local church property was when the congregation no longer existed.

Local witnesses recounted the origin and development of the two local churches.

Eastern Heights began as a mission of Independent Presbyterian Church of Savannah. It was incorporated on December 6, 1930, and on the following day was commissioned by the Savannah Presbytery of the general church. At that time the Independent Church conveyed to Eastern Heights property to be used as a chapel, this deed naming as grantee "Eastern Heights Presbyterian Church, a religious corporation." Later two other tracts were acquired by it, each deed naming as grantees certain persons as "Trustees of the Eastern Heights Presbyterian Church, and their successors in office." One of these deeds provided that the property was to be held in trust "for the use and benefit of the congregation of the Eastern Heights Presbyterian Church." At no time has the general church made any gift or loan to Eastern Heights.

Hull Memorial was organized as an independent Presbyterian church and became affiliated with the general church in 1890. A portion of the property now in question was acquired in 1914; the deed named the Mary Elizabeth Blue Hull Memorial Presbyterian Church as grantee and recited that the property was to be used as and for a place of worship by a church of the Presbyterian denomination known as that named grantee. Later other property was acquired by it and these later deeds also named the Hull Memorial Church itself as grantee. Neither the general church nor its Savannah Presbytery has contributed any money to the purchase, buildings, operations, or maintenance of Hull Memorial.

Many documents were introduced in evidence. These included deeds, the withdrawal resolutions of the two local churches and the resolution showing the actions of the Administrative Commission above referred to.

Other documents pertained to the faith and practice of the general church when Eastern Heights and Hull Memorial affiliated with it and acquired the properties now in question. Many of these relate to actions which the two local churches cite as abandonment by the general

church of its original tenets of faith and practice. These domuments will be referred to later in this opinion.

From the foregoing facts, we regard the controlling question to be this: Are local Presbyterian churches which withdraw from the general church, charging abandonment by the general church of the tenets of faith and practice existing when the local churches affiliated with it, entitled to maintain an action in the civil courts for the possession and use of the local church properties, legal title to which is in the local churches?

1. The appellants strongly urge that the petitions raise ecclesiastical questions which are exclusively within the jurisdiction of the church, not of the civil courts, and therefore that the plaintiffs cannot maintain this action.

In considering this contention we are mindful that "The traditional American doctrine of freedom of religion and separation of church and state carries with it freedom of the church from having its doctrines or beliefs defined, interpreted, or censored by civil courts." *Sapp* v. *Callaway,* 208 Ga. 805, 810-811 (69 SE2d) 734).

But, at the same time, we also keep in mind that when property rights are involved civil courts will, in a proper case, protect them against wrongful diversion. Our *Code,* § 22-408, provides: "Courts are reluctant to interpose in questions affecting the management of the temporalities of a church; but when property is devoted to a specific doctrine or purpose, the courts will prevent it from being diverted from the trust."

In this country the authorities are virtually unanimous in holding that because of the connective governmental structure of the Presbyterian Church, there is an implied trust upon the local church properties for the benefit of the general church. See in this connection, Watson *v.* Jones, 80 U.S. (13 Wall.) 679 (20 LE 666); St. John's Presbytery *v.* Central Presbyterian Church of St.

Petersburg, (Fla.) 102 S2d 714, 717; Presbytery of the Everglades *v.* Morgan, (Fla.) 125 S2d 762. Furthermore, in the trial of the present cases the court charged the jury that the local church properties in question were subject to an implied trust in favor of the general church, and no cross appeal was taken on this portion of the charge by the local churches. We take the view that such a trust is conditioned upon the general church's adherence to its tenets of faith and practice existing when the local church affiliated with it and that an abandonment of, or departure from, such tenets is a diversion from the trust, which the civil courts will prevent.

This court in *Mack* v. *Kime,* 129 Ga. 1 (2) (58 SE 184, 24 LRA (NS) 675), held: "The general rule is that where property rights are involved, the civil courts will interfere to protect the members of an ecclesiastical organization who adhere to the tenets and doctrines which the organization was organized to promulgate, and protect them in the right to use the property, as against those members of the organization who are attempting to divert the same to purposes utterly foreign . . ." See also, *Tucker* v. *Paulk,* 148 Ga. 228 (3) (96 SE 339), where this court approved the trial court's finding on whether the plaintiffs had "departed from the organization and doctrine of the church."

A different result is not required because of the rule that "Generally, the civil courts will look to the decisions of the constituted tribunals of a church in determining whether or not there may have been an abandonment of the faith, doctrines, practices, and decorum of a church." *Sapp* v. *Callaway,* 210 Ga. 277 (79 SE2d 532). Also, see *Mack* v. *Kime,* 129 Ga. 1, supra. Here, the Administrative Commission appointed by the Savannah Presbytery made no decision as to whether the general church had abandoned its original tenets of faith and practice. Furthermore, the local churches were not required to seek an adjudication of such issue within the framework of the

general church because the diversions complained of had already occurred and the local churches had withdrawn and severed their connection with it.

The local churches charge abandonment of, or departure from, original tenets of faith and practice by the general church, and hence the civil courts will entertain the action.

2. Appellants contend that even if the civil courts will determine the question of abandonment of, or departure from, original tenets, the local churches must, under *Mack* v. *Kime,* 129 Ga. 1, supra, show absolute or complete abandonment in order to obtain relief.

The *Mack* case, in discussing the degree of abandonment or departure necessary to obtain protection, uses terminology such as "complete abandonment," "purposes utterly foreign," "entirely abandon," "utterly abandon," and "abandon altogether." We disagree. We do not believe that "complete" or like degree of abandonment or departure is necessary for relief. To the extent that *Mack* v. *Kime,* 129 Ga. 1, supra, requires such standard, it is expressly overruled.

The degree of abandonment or departure necessary to be shown to obtain protection in civil courts is that emphasized in the case at bar by the trial judge—substantial abandonment. "Substantial" is synonymous with "fundamental," "material," "vital," and "important," and is in keeping with the standard which is recognized in the following treatise statement: "No denomination, however, can exercise its share of control over a local congregation so as to require the property of the latter to be used for propagation of doctrines in conflict with the fundamental teachings of the denomination as accepted at the time the local congregation united with the denomination. The unlawful change of the constitution and confession of faith by the superior judicatory does not authorize a new use

of its property by the individual church. In such case those who adhere to the original constitution and confession of faith are entitled to the use of the property." 76 CJS 849, Religious Societies, § 70. See also, 45 AmJur 771, Religious Societies, § 61; Annots., 24 LRA (NS) 692, 8 ALR 105, 70 ALR 75.

To condition relief upon *complete* abandonment would impose upon the local churches the burden of showing that the general church had rejected each and every tenet of faith and practice existing when the local churches affiliated with it. For instance, suppose that this general church declared that it had abandoned as part of its tenets of faith and practice the entire New Testament. With that abandonment would go the existence of Jesus Christ, and the accounts of His birth, ministry, crucifixion, resurrection, and ascension into heaven. That would not be a "complete" abandonment of all the original tenets of faith and practice of that church. Yet even with the Old Testament, with all of its value, remaining, this would be an entirely different theology.

Therefore, we hold that upon a showing of substantial abandonment of, or departure from, the original tenets of faith and practice by the general church, the civil courts will afford protection to the local churches as to possession and use of the local church properties, free of any claim by the general church.

It is significant that here the issue is between the local churches and the general church, not between two factions of a local church, as governed by *Code* § 22-406, which in material part provides that ". . . The withdrawal by one part of a congregation from the original body . . . is a relinquishment of all rights in the church abandoned." In this connection, we are familiar with some statements to the effect that the members of the local church who withdraw from the general church are not entitled to the property. See 45 AmJur 778, Religious Societies, § 68; 76

CJS 850, Religious Societies, § 71; St. John's Presbytery *v.* Central Presbyterian Church of St. Petersburg, (Fla.) 102 SE2d 714, supra, and citations. However, we know of no decision involving an issue between a local church and its general church, where a substantial abandonment of, or departure from, the original tenets of faith and practice by the general church is shown, which holds that in such situation the local church is not entitled to the use of its property. The cases relied upon by the appellants are thus distinguishable.

3. This brings us to the evidence and an evaluation of it in the light of the requirement of *substantial* abandonment or departure.

The first of the actions cited by the two local churches is the declaration of the 1961 General Assembly of the general church that the doctrine of foreordination, as stated in the Confession of Faith, is not essential to Reformed theology. This, the local churches contend, violates the Westminster Confessions of Faith and the Larger and Shorter Catechisms in stated particulars.

Likewise claimed as departure from original tenets of faith and practice is the position taken by the General Assembly in 1965 in refusing to endorse a proposal by a Presbytery to seek constitutional permission for voluntary Bible reading and prayer in the public schools.

Another contended departure related to involvement, through the National Council of Churches for Christ, in the Mississippi Delta Project, a civil rights movement sponsored by several organizations.

Complaint is also made of the action taken by the 1963 General Assembly authorizing the ordination of women as ministers and ruling elders. This, the local churches claim, violates designated portions of the Scriptures and the Book of Church Order.

Several actions taken by this highest authority of the general church are urged to have been improper involve-

ments in civil affairs, constituting an abandonment of original faith and practice.

One of the involvements thus complained of was a 1966 pronouncement on the Vietnam conflict. This pronouncement approved the policy statement which the National Council of Churches for Christ had announced in 1965. That statement, after expressing sentiments upon the situation, concluded with the recommendation that the United States: "Continue to reaffirm and manifest its readiness for unconditional discussion and negotiation in such manner as will remove any uncertainty about official policy relating to the termination of military action. Such reaffirmation might be strategically expressed by the cessation of all bombing of North Vietnam for a sufficient period to create more favorable circumstances for negotiations to begin and with a simultaneous effort to induce the North Vietnam government to stop sending military personnel and material into South Vietnam."

Another involvement in civil affairs complained of was endorsement by the General Assembly of the civil rights movement.

One of the strongest objections by the two local churches is directed at the position of the general church on the subject of civil disobedience. Advocacy of this, insofar as the evidence shows, began in the spring of 1964.

The material for Sunday School teachers in "The Earnest Worker" for that period included a presentation entitled "The Rightful Claims of Government." After stressing obligations to both government and God, it declared that "these are times when the civil authority (or church authority, for that matter) must be disobeyed . . ." and stated that whether or not peace and quiet should be maintained in a community where there is injustice is a matter for each person to decide with his own conscience and what he believes will be pleasing to God.

The Sunday School Quarterly for Older Youth, the approximate age group of 12 to 15, for May 24, 1964, con-

tained a statement on civil disobedience, which is quoted here in full:

"Civil Disobedience. We are making history in our country and as Christians we should be awake to that fact. The problems created by segregation or integration are not new; they are as old as the human race. In our country the problem is not new, either, but in these past years we are all witnessing a new approach to that problem. For a century many have felt that the problem would solve itself as time went on; but we know now that hardly anything in human relations gets solved all by itself. About some sickness in the body, or a broken leg, we rightly say: be patient and let nature take its course. But with human problems one can hardly say that; human nature is not dependable, and is quite as likely to go the wrong way as the right way. In fact, the Bible keeps on drumming away at the idea that it is more likely to go that wrong way than the right way. That is the first point we should make today: that good causes must be helped along, and we Christians must not walk away from them.

"During the centuries people have used various methods of trying to ge their problems solved: revolution, insurrection, immigration, strikes, shutdowns, sit-ins, picket lines. Each of these has had varied success in achieving results that were looked for. The phrase *civil disobedience* is something Gandhi has brought into our English language, and he says he got the idea from Jesus and the Sermon on the Mount. Today's reference to Luke 20 is of importance here. Jesus tells his questioner to give to Caesar the things that are Caesar's, but to God the things that are God's. This not only means that I pay my legitimate taxes to Caesar, and go to church on Sunday and put something into the offering plate for God. It is not quite as simple as that. It may also mean that I *withhold* from Caesar what Caesar thinks is his, but what really belongs to God!

"The disciples ignored established customs when they walked through the cornfields, plucked some corn and ate it; this was threshing in the judgment of the scribes, and was prohibited. Jesus violated the code of the Pharisees when He healed people on the Sabbath for the law at that time prohibited this. To help a sick man takes priority over the Sabbath laws; a moral law takes precedence over a civil law. You do not start a revolution; you do not bring in tanks and set machine guns up in front of the mayor's residence to shoot him when he comes out. You quietly make your protest known, persistently you make it known. When asked about it you give your morally justifiable reasons for doing what you do. You appeal to God and his righteousness rather than to the laws of the land. And you keep at it until the laws of the land are changed to conform to what you believe is right. And if the law says you may not picket or gather peaceably for purposes of protest, then you violate the law, appealing to a higher law to justify your actions. And, of course, you take the consequences.

"Taking the Consequences. There were some people in the early days of the church who were haled before the court because they would not sacrifice to the emperor. They believed emperor worship was idolatry, and that they could not affirm the Lordship of Christ and at the same time the lordship of the emperor. Many Christians were martyred because of their stand in this matter. Peter says that they must not be surprised at that treatment, and they mustn't be ashamed of it. If they suffer because they have done wrong, that's what they can expect, and they shouldn't cry about it. But if they suffer for doing what was right and good, they must bear up under that too, and meanwhile commit their souls to a righteous Creator.

"This is true today when anyone feels it his or her duty to engage in some form of protest as a matter of conscience. If the paddy wagon comes and takes you off

to jail you will have to bear up under that experience. If you had done wrong, then it need not embarrass you. I do not think a Christian should go out of his way in order to get arrested, seeking martyrdom so he can talk about it."

In April 1965, the General Assembly, as shown by its minutes, went on record with a pronouncement entitled "Civil Disobedience: The Christian and the State." It is as follows:

"This brings up to the problem of civil disobedience: the open, non-violent and conscientious refusal to obey a law or laws, as a means of appeal to a higher law, combined with the willing acceptance of the penalty. It is an extreme demonstration of dissatisfaction with some aspect of society. It also presents in its purest form the problem of the relation of the Christian to the state.

"Paul, and the Confession of Faith as well, affirm that governments are instituted by God and should therefore be obeyed. However, the civil magistrates are also bound under their charge:

" 'To protect the person and good name of all their people in such an effectual manner as that no persons be suffered, either upon pretense of religion or infidelity, to offer any indignity, violence, abuse or injury to any other person whatsoever.' (Westminster Confession, XXV, 3.)

"It needs no elaboration that within the province of our church, we have often kept silent, though men, because of race, have suffered 'indignity, violence, abuse, and injury.'

"It is true that within our system of government, means are provided, through the law, to present and adjudicate grievances for such injustices. Yet, when due course of civil law is denied or abridged, the Christian, for whom 'God alone is Lord of Conscience,' may validly appeal to the Higher Law, led by the inner witness of the Holy Spirit, speaking in and through the scriptures.

This great ordering Word may lead him against the world, against the establishment of the civil magistrates. But he should be very cautious about taking such a lonely position and should hold it only in fear and trembling. If it leads him into civil disobedience, he should not try to justify his position before men. He has violated the law, the public standard of justice, and hence must recognize his liability to the judgment of the civil court.

"The church exists to unite men by God's grace with themselves, with God, and with their fellows—to make them whole. Therefore, it should give the support of Christian compassion to any member who, following his conscience in obedience to the Word, engages in civil disobedience.

"The methods of achieving justice which have been delineated here, while accomplishing in varying measures this end, cannot, in fact, bring to fruition our desire for unity in the bond of peace. Therefore, we as Christians are called upon to look beyond these methods to work toward the reconciliation of all parties involved by encouraging dialogue in the spirit of Christian love."

A year later the 1966 General Assembly, in answering a number of overtures seeking its action on the above declaration, acknowledged "the unrest and disturbance within parts of the church" as a result of the declaration. However, it reaffirmed that statement and attempted to clarify its "spirit and intent," concluding with the following summation:

"The Presbyterian Church, U. S., desires at this time to reaffirm the obligation of all her obedient sons and daughters: (1) To live responsibly under the law of the land; (2) To use personal influence and ballot to enhance the rule of law so that injustice may be replaced with justice, and the full provisions of the law for justice, protection, and liberty may be enjoyed by every citizen of every community; (3) To regard civil disobedience as

a measure of last resort to be employed only in circumstances of otherwise irremediable deed, and in the exercise of which the whole concept of law is not denied, but affirmed; and (4) To continue to support and regard with compassion those who practice civil disobedience when no legal recourse has been left open to them and who act in Christian conscience and allegiance to Almighty God."

These actions, positions and pronouncements by the general church, the local churches insist, violate fundamental faith and doctrines established long ago. They call attention to the Westminster Confession of Faith, which provides "Synods and councils are to handle or conclude nothing but that which is ecclesiastical; and are not to intermeddle with civil affairs which concern the commonwealth unless by way of humble petition in cases extraordinary; or by way of advice for satisfaction of conscience, if they be thereunto required by the civil magistrate," (Ch. XXXIII, par. 4), and "It is the duty of the people to pray for magistrates, to honor their persons, to pay them tribute and other dues, to obey their lawful commands, and to be subject to their authority, for conscience' sake. Infidelity, or difference in religion, doth not make void the magistrate's just and legal authority, nor free the people from their due obedience to him; from which ecclesiastical persons are not exempted . . ." (Ch. XXV, par. 4). They also stress the applicability of certain provisions of the Book of Church Order, to wit: "The power which Christ has given his Church is wholly moral and spiritual, and constitutes the Church a kingdom and government distinct from the civil commonwealth . . ." (Ch. 1, § 1-2).

All these actions cannot be brushed aside as trivial and inconsequential. The General Assembly's declaration that foreordination was no longer necessary for Reformed theology was contrary to one of the basic tenets which have made Presbyterianism significantly different

from other denominations. The General Assembly's endorsement of civil disobedience, which would allow a citizen to decide whether or not he will obey the law, is a radical venture into civil affairs. It is absolute defiance of law and order, and is the road to anarchy. Also, the General Assembly's recommendations as to what steps should be taken to secure peace in Vietnam is an entry into diplomatic and military matters beyond the church's function as delineated by its Westminster Confession of Faith and Book of Church Order.

These matters constituted a course of conduct by the highest level of the general church's government for a period continuing into 1966 when the withdrawal resolutions were adopted by the local churches and the instant suits were filed. None of these departures existed when these two local churches affiliated with the general church.

As we appraise it, the foregoing evidence presented an issue for the jury to decide, whether the totality of actions of the general church amounted to a substantial abandonment of, or departure from, the original tenets of faith and practice by the general church. The jury found that they did.

4. The above rulings are controlling upon all of the enumerations of error made here.

(a) Under the rulings in Divisions 1 and 2, the trial court properly refused to grant appellants' oral motion to dismiss the petitions, asserting that the allegations concerning abandonment or departure from faith and doctrine are ecclesiastical questions exclusively within the jurisdiction of the church rather than the civil courts, and even if the courts are allowed to determine such question the plaintiffs have not shown absolute abandonment.

(b) The admission of testimony concerning departure from faith and doctrine by two of the appellees' witnesses was proper in view of the ruling in Division 1.

(c) Denial of the appellants' motions for nonsuit, based upon the ground that the appellees' admissible evidence was insufficient to sustain their actions as pleaded, and for directed verdict, upon the ground that there was no conflict in the evidence and it was shown that all ecclesiastical questions involved rested exclusively with the church, was proper under the rulings made in Divisions 1 and 3.

(d) In view of the ruling in Division 2, the trial court properly charged the jury on "substantial," rather than "absolute," as the degree or standard of abandonment of faith and doctrine by the general church they must find in order to give relief to the appellees.

We find no error in the matters enumerated as error. The judgments are therefore

Affirmed. All the Justices concur.

ON MOTION FOR REHEARING.

We have carefully considered all of the contentions made by the appellants and have found them not meritorious. As to the contention that this was a matter for ecclesiastical, not civil, courts, it should be pointed out that the appellants in their answer and cross action filed in each case, specifically prayed for affirmative relief as to the property in question, thereby themselves invoking rulings by the civil court as to the matters now complained of.

The motion for rehearing is without merit, and is denied.

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1968

No. [redacted] 71

PRESBYTERIAN CHURCH IN THE UNITED STATES
and J. LEHMON BRANTLEY, Chairman of the
Administrative Commission of the
Presbytery of Savannah,
Petitioners,

VS.

MARY ELIZABETH BLUE HULL MEMORIAL
PRESBYTERIAN CHURCH,
Respondent,

AND

PRESBYTERIAN CHURCH IN THE UNITED STATES
and J. LEHMON BRANTLEY, Chairman of
the Administrative Commission of
the Presbytery of Savannah,
Petitioners,

VS.

EASTERN HEIGHTS PRESBYTERIAN CHURCH and
FRANK L. PERRY, SR., JOHN BRUNING,
LESTER R. SARGENT, HARDIN
C. NORMAN and ARMIN S.
HUBERT, Trustees,
Respondents.

OPPOSING BRIEF OF RESPONDENTS

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1967

No. 1380

PRESBYTERIAN CHURCH IN THE UNITED STATES and J. LEHMON BRANTLEY, Chairman of the Administrative Commission of the Presbytery of Savannah,
Petitioners,

VS.

MARY ELIZABETH BLUE HULL MEMORIAL PRESBYTERIAN CHURCH,
Respondent,

AND

PRESBYTERIAN CHURCH IN THE UNITED STATES and J. LEHMON BRANTLEY, Chairman of the Administrative Commission of the Presbytery of Savannah,
Petitioners,

VS.

EASTERN HEIGHTS PRESBYTERIAN CHURCH and FRANK L. PERRY, SR., JOHN BRUNING, LESTER R. SARGENT, HARDIN C. NORMAN and ARMIN S. HUBERT, Trustees,
Respondents.

OPPOSING BRIEF OF RESPONDENTS

STATEMENT OF THE CASE

On April 17, 1966, the Eastern Heights Presbyterian Church (Respondent Church) by the unanimous action of its congregation voted to sever its relationship with the Savannah Presbytery and the Presbyterian Church in the United States. In its resolution, adopted that date, it charged the Petitioner church with certain fundamental and substantial departures from the faith, dogma, and discipline that existed at the time of its affiliation in 1930. Predominantly, the General Assembly of the Petitioner church was accused of advocating civil disobedience, counseling on the Viet Nam War, and engaging in other political activities —all in violation of the Westminster Confession of Faith and the Constitution of the Petitioner church.

The action of the Respondent church was within the freedom of religion clause of the First Amendment of the Constitution of the United States and did not violate the Constitution of the Petitioner church.

About a month after the Respondent church had disaffiliated, the Savannah Presbytery, a lesser judicatory of the Petitioner church, appointed an Administrative Commission. This commission adopted a resolution which threatened the peace and integrity of the Respondent church. Fearful of a trespass upon its church property[1] and interference with its church activities, the Respondents sought a permanent injunction in the Superior Court of Chatham County, Georgia. The Petitioners answered the Respondents' petition and sought the same equitable relief.

At the trial evidence was presented sustaining the charge of deviations brought against the Petitioner church. It was clear and concisive. It was not rebutted or refuted.

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1. Petitioners have no funds invested in any of the three properties owned by the Respondents (Record confirms).

The Book of Church Order and Confession of Faith, parts of the Petitioner church's Constitution which prohibit it from engaging in the activities charged, were introduced also. These constitutional inhibitions were the legal standards applied in determining whether or not the Petitioner church had transgressed its doctrine, dogma, and discipline. In determining the standard of departure that would be used in measuring the unconstitutional conduct of the General Assembly of the Petitioner church, the court charged on substantial departure.[2]

The trial court's verdict and judgment was for the Respondents. The Petitioners then appealed to the Supreme Court of Georgia. It affirmed the judgment of the lower court. The Petitioners' Motion for Rehearing was denied.

WHY CERTIORARI SHOULD BE DENIED

The petition for a writ of certiorari involves the verdict of a jury granting a permanent injunction restraining the Petitioners from trespassing upon the Respondents' property and interfering with the church activities enjoyed there. It fails to show that the judgment of the trial court, which was affirmed unanimously by the Supreme Court of Georgia, decided a federal question of substance not previously determined by this Court or was decided in a way probably not in accord with the applicable decisions of this Court.

The Petitioners' challenge of the right of the civil courts to assume jurisdiction of the issues and the collateral property rights is without merit. It fails even under the legal precedent which it urges upon this Court. In *Kedroff* v. *St.*

2. At page 6 of their petition, the Petitioners assert that the Respondents did not request that *Mack* v. *Kime*, 129 Ga. 1, 58 S. E. 184 be overruled. This is error as it applies to the standard of departure. Before both the trial court and the Supreme Court of Georgia the test of "substantial" rather than "complete" was urged.

Nicholas Cathedral, 344 U. S. 100, 120, 121 (1952), Mr. Justice Reid declared the rule that the federal courts would follow:

> "There are occasions when civil courts must draw lines between the responsibilities of church and state for the disposition or use of property."

The decision of the Supreme Court of Georgia, which is the subject of the petition, affects the substantive law of the State of Georgia. The determination of the issue, whether or not the supreme judicatory of a church has violated the implied trust by the transgression of its dogma, doctrine, or discipline, has been previously decided by numerous courts, state and federal. These decisions span the ensuing years since *Watson* v. *Jones*, 80 (13 Wall.) 679 (1871).

No new issue is presented in this petition. It has been a recognized province of the state that its courts where property rights are involved have the jurisdiction to resolve the issues concerning departure and as a concomitant vest the control of property in those, faction or church, who adhere to the existing doctrine, dogma, and faith. Consonant with this thesis, the Supreme Court of Georgia affirmed the judgment of the lower court. Succinctly, it found that the Petitioners through its highest judicatory, the General Assembly, had substantially and fundamentally departed from its doctrine, dogma, and faith as established by its constitution. This, then, is the sole issue presented.

To charge that the decision of the Supreme Court of Georgia violates the First Amendment or any federal decision applying the same is unjustified. The decision in no way restrains the free exercise of religion or affects the establishment thereof. The denial of the petition will leave all parties exactly where they were on April 17, 1966, when the Respondents chose by resolution, unanimously adopted

by the congregation,[3] to disaffiliate from the Petitioner church. The Petitioner church unrestrained may, if it wishes, continue its disregard of the constitutional restraints which were the basis of the Respondents' action. It may continue to believe and act as it wishes.

Past history demonstrates the disinclination of this Court to extend *Kedroff* where the courts have utilized the implied trust or related doctrines. See *Romanian Orthodox Missionary Episcopate* v. *Trutza*, 205 F. 2d 107 (6th Cir.), cert. denied, 346 U. S. 915 (1953); *Whipple* v. *Fehsenfeld*, 173 Kan. 427, 249 P. 2d 638, cert. den. 74 S. Ct. 23, reh. den. 74 S. Ct. 271, 344 U. S. at 115, and *Katz* v. *Singerman*, 241 La. 103, 127 So. 2d 515, cert. denied October 23, 1961, 368 U. S. 15.

Further, the petition for certiorari should be denied because the Petitioners failed to timely and properly raise the federal questions on which they base their petition with the specification required in the trial court by their pleadings, requests for charge, and specifications and in the Supreme Court of Georgia in their Enumeration of Errors. The record will show, and this is confirmed by the Petitioners' brief, that the federal questions were raised for the first time on their Motion for a Rehearing to the Supreme Court of Georgia, after its initial decision. Too, it will reflect that the decision of that court in denying the motion did not entertain the federal questions presented and make any determination of them. Finally, the Writ of Certiorari should be denied because it is not affirmatively shown that federal questions were presented timely to the Supreme Court of Georgia and that its decision determined a federal question.

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3. The vote was 122 to 0 (Record confirms).

THE PETITIONERS FAILED TO PROPERLY OR TIMELY RAISE THE CONSTITUTIONAL QUESTIONS WHICH WOULD GIVE THIS COURT JURISDICTION

The Motion for Rehearing filed by the Petitioners in the Supreme Court of Georgia did not properly or timely raise a federal question. Therefore, no federal question was ruled upon by the Supreme Court of Georgia, and the Petitioners' petition for a Writ of Certiorari is defective.

The Petitioners' petition for certiorari fails under their authority; *Herndon* v. *Georgia*, 295 U. S. 441 (1935). To give this Court jurisdiction the Petitioners must show: (1) the proceedings meet the test of particularity and specification required; (2) the federal questions presented, for the first time, in the Motion for a Rehearing, were decided in denying the motion.

The petition fails under each of the above tests. Paragraph 16 of the Petitioners' answer to the Respondents' action alleges that the Respondents appropriated the church property in violation of the laws of the United States of America. This is the only allegation presenting a federal issue raised by the Petitioners' pleading. No violation of any federal amendment was identified or specified. At the trial no requests for charge raised violations of the First or Fourteenth Amendments.[4]

Only on the Motion for a Rehearing; after the decision of the Supreme Court of Georgia, were any federal questions presented. The decision of the Supreme Court of

4. The record and petition filed by the Petitioners irrefutably established the absence of any federal question properly and timely raised. Contention that such questions were raised in their brief to the Supreme Court of Georgia is insufficient under Paragraph 1, subsection (f) of Rule 23 of the Supreme Court rules.

Georgia denying the Motion for a Rehearing was silent on any federal issue raised.[5]

The Petitioners were alerted and had every reason to anticipate that *Mack* v. *Kime,* 129 Ga. 1, 58 S. E. 184 (1907) would be changed as to the standard of departure declared in that decision.[6] Fatal affirmation of this is found in the Petitioners' Enumeration of Errors. The fifth error asserted that the Court erred in charging on "substantial abandonment" rather than "absolute abandoment". The Respondents sought the affirmation of this charge in their brief to the Supreme Court of Georgia requesting the approval of the judgment of the trial court.

The Petitioners' reliance upon the doctrine of *stare decisis* stated in the Georgia Annotated Code 6-161 is without merit. As previously commented upon, the Respondents in argument before the trial court and in their brief to the Supreme Court of Georgia requested that the complete test of *Mack,* supra be rejected and new standard of departure (substantial) be adopted. The assertion of the Petitioners to the contrary reflects an indifference to the history of the case.

The sole basis for the injection of a federal question is the Petitioners' contention that the Supreme Court of Georgia overruled in toto, *Mack,* supra, and as a consequence rejected *Watson* v. *Jones,* 80 (13 Wall.) 679 (1871). Such is not the case, and voluble insistence can not make it otherwise.

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5. For comparable language to that used by the Supreme Court of Georgia in denying the Petitioners' Motion for a Rehearing and where this Court dismissed the Writ of Error see *Consolidated Turnpike Co.* v. *Norfolk & O. V. R. Co.,* 228 U. S. 326, 333, 334 (1913). The highest State court's language denying the motion was:

> "The court having maturely considered the petition aforesaid, the same is denied."

6. Petitioners would not have been denied due process if not alerted. *Tidal Oil Co.* v. *Flanagan,* 263 U. S. 444 (1924).

Mack, supra, was not overruled completely. It was overruled to the extent, and to the extent only, that it changed the standard of determining transgressions by the supreme church judicatory from "absolute" to "substantial."

Mack, supra had not adopted this Court's interpretation of the First and Fourteenth Amendments to the Constitution. It is recognized that *Watson*, supra, was a decision of the federal common law under the philosophy expressed in the First Amendment. At the time of the Mack, supra, (1907) decision, this Court had not extended the First Amendment to the states by invoking the Fourteenth Amendment.

For this Court to review the decision of the Supreme Court of Georgia, it is mandatory upon the Petitioners that they show not only that a federal question was timely presented, but that the decision of the Supreme Court of Georgia rested upon the application of the First and Fourteenth Amendments. Patently, the Supreme Court of Georgia grounded its decision in a change of the substantive law of the State. The surmise on the part of the Petitioners that the decision rested upon the application of the First and Fourteenth Amendments is not sufficient to give this Court jurisdiction.

In *Lynch* v. *New York, Ex Rel. Pierson*, 293 U. S. 52, 54 (1934) Mr. Chief Justice Hughes precisely declineated the test:

> "It is essential to the jurisdiction of this Court in reviewing a decision of a court of a State that it must appear affirmatively from the record, not only that a federal question was presented for decision to the highest court of the State having jurisdiction, but that its decision of a federal question was necessary to the determination of the cause and that it was actually decided or that the judgment as rendered could not have been given without deciding it."

He concluded:

> "Where the judgment of the state court rests on two grounds, one involving a federal question and the other not, or if it does not appear upon which of the two grounds the judgment was based, and the ground independent of a federal question is sufficient in itself to sustain, this Court will not take jurisdiction."

The Supreme Court of Georgia in the decision complained of rested its determination in a change of the substantive law of the State. This decision unrelated to a federal question is sufficient to remove it from the jurisdiction of this Court.

The mere fact that the decision of the highest State court may be erroneous on a question of State law, or has overruled principles or doctrines established by previous decisions on which the Petitioners have relied, does not give rise to claim under the Fourteenth Amendment or otherwise confer appellate jurisdiction on this Court.[7]

Petitioners had every opportunity to invoke the First and Fourteenth Amendments from answer to appeal. They did not.

WATSON V. JONES, 80 (13 WALL.) 679 (1871), IS NOT VIOLATED WHERE THE HIGHEST CHURCH JUDICATORY HAS TRANSGRESSED ITS CONSTITUTION

The implied trust theory, which was applied by the Supreme Court of Georgia, assumes that the actions of the supreme judicatory of a representative church are valid unless plainly ultra vires, collusive, or arbitrary. Under the implied trust, where property rights are involved, the question of deviations from faith and dogma may be thrust upon the civil court. The court then will have to decide

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7. *Brinkerhoff-Faris Co. v. Hill*, 281 U. S. 673 (1930).

whether the deviations charged are so fundamental that they could not be changed, or there has been a fundamental change improperly made. This projects the issue of whether a representative church can claim the protection of the First Amendment to the Constitution if its actions are made without the framework of its own constitution. In applying the implied trust, the Supreme Court of Georgia held that the civil courts will in a proper case prevent the diversion of church property from the doctrine or purpose to which it was originally devoted.

Where a property right between the local congregation and a representative church rests upon the conduct of the highest church tribunal, the civil court has the responsibility to determine if the church authority acted within its constitution. It is not required to blindly follow or accept the legal formula pronounced in *Watson* v. *Jones*, supra, where it is proven that the representative church has departed from the faith and dogma that existed at the time of the affiliation of the local church.

The rigid formula promulgated in *Watson* v. *Jones*, supra, losts its inflexibility in the succeeding years. The most recent case which has tested its rigidity is *Romanian Orthodox Missionary Episcopate* v. *Trutza*, 205 F. 107, (1953). The facts are reminiscent of those contained in *Kedroff*. The spectre of the domination of the church by a Communist government resulted in a church property conflict between the alleged bishop appointed by a submissive Romanian Patriarch and the local Episcopate. In finding for the Episcopate, the Sixth Circuit Court of Appeals found that the Episcopate had the authority to revoke its affiliation with the Romanian Patriarch and Holy Synod of Romania because of the dictation of ecclesiastical appointments by the Communist controlled government. The court observed:

"We also think that this conclusion is in accord with the spirit if not the letter of the *Kedroff* case, which declares that freedom to select the clergy, where no improper methods of choice are proven. . ."

Once again *Watson* as it pertains to the representative type of church government was modified. The decision of the Sixth Circuit Court of Appeals considered the propriety or impropriety of the methods of functioning on the highest church level. If the methods of the highest church judicatory or its equivalent are proven to have been improper, the court may look beyond the rule formulated in *Watson*.

The questioning of the unlimited power of the highest church judicatory began with *Bouldin* v. *Alexander*, 82 (15 Wall.) U. S. 131 (1872). With *Bouldin* the courts began to demand from the church tribunals adherence to basic concepts of equity. By implication *Bouldin* established that the court would only defer to a church tribunal which had followed its own procedural rules. This Court said:

"In a congregational church the majority, if they adhere to the organization and doctrines, represent the church."[8]

In *Brundage* v. *Deardroff*, 55 F. 839 (1893), which involved a dispute between two factions of the church of the United Brethren of Christ, a national hierarchical church, Judge Taft stated at pages 847-848:

"We do not understand the supreme court, in *Watson* v. *Jones*, to hold that an open and avowed defiance of the original compact, and an express violation of it, will be taken as a decision of the supreme judicatory which is binding on the civil courts. Certainly the effect of *Watson* v. *Jones* cannot be extended beyond the principle that a bona fide decision of the fundamental law of the church must be recognized as conclusive by civil courts. Clearly, it was not the intention

8. Id. at 140.

of the court to recognize as legitimate the revolutionary action of a majority of a supreme judicatory, in fraud of the rights of a minority seeking to maintain the integrity of the original compact."

The impact of *Watson* was further minimized by *Gonzalez* v. *Archbishop*, 280 U. S. 1 (1929). Mr. Justice Brandeis observed at page 16:

> "In absence of fraud, collusion or arbitrariness, the decisions of the proper church tribunals on matters purely ecclesiastical, although affecting civil rights, are accepted in litigation before the secular courts as conclusive, because the parties in interest made them so by contract or otherwise."

The modification of *Watson* by the federal judiciary continued with *Sims* v. *Greene*, 160 F. 2d 512 (1947). In determining the procedural validity of the removal of a contesting bishop, the Third Circuit Court of Appeals in applying the law of the forum, the State of Pennsylvania, quoted from the opinion of Mr. Justice Williams of the Supreme Court of Pennsylvania in *Kreker* v. *Shirey*, 163 Pa. 534, 30 A. 440 (1894):

> "The power of a civil court, as distinguished from that of an ecclesiastical tribunal, in respect to disputes between warring church factions is limited to an ascertainment of the pertinent church law, to inquire as to whether or not the law has been conformed with by the churchly tribunal or judicatory, and to the enforcement of the judgment or order of the religious tribunals or judicatory if the order or judgment of the tribunal or judicatory of the church has been reached in accordance with the law of the church."

The adoption of the law of Pennsylvania by the Third Circuit Court of Appeals brings the procedural test projected by Judge Taft and Mr. Justice Brandeis into precise focus. No longer were the federal courts bound by the formula of *Watson* v. *Jones*, supra.

The Supreme Court of Georgia has affirmed the proposition that judicial abstention is not absolute even in the internal affairs of a religious association. The courts will assume jurisdiction to decline the enforcement of a decision of an ecclesiastical tribunal where to enforce such decision would be offensive to the peace and good order of society, would approve an arbitrary or ultra vires act, or would be repugnant to the principle of equity.

THE DECISION OF THE SUPREME COURT OF GEORGIA IS NOT CONTRARY TO MACK V. KIME, 129 GA. 1, 58 S. E. 184 (1907) AND WATSON V. JONES, 80 (13 WALL.) 679 (1871)

The Petitioners in their petition categorically declare that the decision of the Supreme Court of Georgia reversed *Watson* v. *Jones*, supra, and *Mack* v. *Kime*, supra. This it did not do. At pages 69 and 70 of the decision[9] complained of by the Petitioners, the court stated:

> "The *Mack* case, in discussing the degree of abandonment or departure necessary to obtain protection, uses terminology such as 'complete abandonment,' 'purposes utterly foreign,' 'entirely abandon,' 'utterly abandon,' and 'abandon altogether.' We disagree. We do not believe that 'complete' or like degree of abandonment or departure is necessary for relief. To the extent that *Mack v. Kime*, supra, requires such standard it is expressly overruled."

Obviously, the Supreme Court of Georgia overruled *Mack* as to its standard of "complete"[10] only. The charge

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9. 159 S. E. 2d 690, 696.

10. ". . . but where, in a given case, the facts are such that there can be no question that there has been a complete abandonment, and, as a result, the property will be diverted to purposes never contemplated by the original organization, the civil courts will interfere at the instance of those who adhere to the teachings of the original association." *Mack* v. *Kime*, 129 Ga. 1, 22, 58 S. E. 184.

by the Petitioners that this constituted a total reversal of *Mack* and thereby of *Watson* is baseless.

If the Supreme Court of Georgia in 1907 (the year *Mack* was decided), by adopting *Watson* could establish the complete test without violating *Watson*, it must follow that the modification of a standard from complete to fundamental does not constitute a violation of *Watson*. It is axiomatic that the modification of a standard does not result in the total rejection of the case.

The Petitioners rely upon *Stewart* v. *Jarriel et al.*, 206 Ga. 855, 59 S. E. 2d 368 (1950) as authority for the refusal of courts of equity to interfere in the internal affairs of a religious organization involving questions of faith, practice, and law. Unfortunately, the complete holding was not cited. Mr. Justice Hawkins, who authored the opinion, imposed the following qualification upon the unlimited authority of an ecclesiastical body:

> "So long as a professed creed is not subversive of the peace and good order of society, it is not within the province of any department of the government to settle differences in creeds or determine what ought or ought not to be a fundamental of religious belief."

In view of this language from *Stewart*, can it be said that the decision complained of by the Petitioners was the one that first questioned the complete test of *Mack*? It is submitted that *Stewart* constituted the first erosion of the complete standard enunciated in *Mack*. Unquestionably, it was a determining factor in the decision of the Supreme Court of Georgia which overruled *Mack* as to the standard of departure. Parenthetically, in considering the language from *Stewart* and its application to the decision complained of by the Petitioners, what is more subversive of peace and good order than to advocate "man is above the law". This

the Petitioner church did at its General Convention of 1965 and 1966.[11]

THE CIVIL COURTS OF THE STATE OF GEORGIA, UPON A PROPER SHOWING, HAVE THE AUTHORITY TO PREVENT THE DIVERSION OF CHURCH PROPERTY FROM THE DOCTRINE OR PURPOSE TO WHICH IT WAS ORIGINALLY DEVOTED

The Supreme Court of Georgia in affirming the judgment of the trial court recognized the traditional philosophy of freedom of religion with its compatible doctrine of separation of church and state. It acknowledged the Petitioner church's immunity from having its doctrine or dogma of a church defined, interpreted, or censored by the civil courts. However, it rightfully invoked the legal responsibility imposed under Section 22-408 of the Georgia Annotated Code which provides:

> "Courts are reluctant to interpose in questions affecting the management of the temporalities of a church; but when property is devoted to a specific doctrine or purpose, the Courts will prevent it from being diverted from the trust."

In the construction of this statute the Supreme Court of Georgia acknowledged the representative governmental structure of the Petitioner church and concluded that there was an implied trust upon local church properties for the benefit of the general church. The imposition of the implied trust was compatible with *Watson* v. *Jones*, supra. The Supreme Court of Georgia then enforced the bilateral responsibility of the implied trust which flows not only from the local church to the supreme judicatory but also in the reverse. The court found:

---

11. The record will show that the Respondents severed their relationship following the 1965 general convention and before the 1966 convention at which the Petitioners' position on civil disobedience was reaffirmed.

"We take the view that such a trust is conditioned upon the general church's adherence to its tenets of faith and practice existing when the local church affiliated with it and that an abandonment of, or departure from, such tenets is a diversion from the trust, which the civil courts will prevent."

The finding of the Supreme Court of Georgia that it could, in a proper case, take jurisdiction where the denominational church by its actions have effected a diversion of local church property from the implied trust is not without precedent and authority in other jurisdictions, both state and federal.

THE DECISION OF THE SUPREME COURT OF GEORGIA WILL NOT PERMIT ANY CHURCH MEMBER TO TAKE HIS GRIEVANCE TO A COURT OF LAW

The Petitioners in section 4 of their petition entitled, "Reasons for Granting the Writ" make the emotional plea that if the decision of the Supreme Court of Georgia is sustained, that it poses a threat to the continued existence of representative churches. If this were a valid plea, the strength of the representative churches would have been enfeebled many years ago. The decision of the Supreme Court of Georgia that is complained of by the Petitioner is not the first. An examination of the case law, both state and federal, since 1871 will show a multitude of litigation involving representative church governments in which the issue of departures and violations were considered. History will attest that from the genesis of the Petitioner church in 1861 until today it has flourished.[12] Its growth has been equaled by other representative denominations such as Lutheran, Methodist, and Episcopal. Yet, during these years

12. Alexis de Tocqueville, *Democracy in America*, "There is no country in the whole world in which the Christian religion retains a greater influence over the souls of men than in America; . . . They (clergy) keep aloof from parties and from public affairs."

churches and factions have gone to court raising the questions of dogma and doctrine and the collateral property rights.[13] None of these connectional churches have suffered.

Rather than having a debilitating result upon the Petitioner church and others in the representative class, action by this Court affirming the decision of the Supreme Court of Georgia, will have an invigorating and chastening effect. An affirmation will require the highest church courts to adhere, and strictly so, to the faith and dogma as declared in their constitutions and confessions. Equally, it will remind them that changes in faith and dogma must be preceded by the proper amendments to their laws.

If the Petitioner church in good faith wished to become embroiled in civil disobedience and other political activities, it could, as provided for in its constitution, have amended the Book of Church Order and Confession of Faith removing the inhibitions. This it did not do.

To remove the constitutional restraints, amendments to the Book of Church Order and Confession of Faith were necessary. Procedurally, this would require the submission of amendments to the presbyteries for their advice and consent (a majority is required to amend the Book of Church Order and three-fourths to amend the Confession of Faith).

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13. *Bouldin* v. *Alexander*, 82 (15 Wall.) U. S. (1872); *Brundage* v. *Deardroff*, 55 F. 839 (1893); *Gonzalez* v. *Archbishop*, 280 U. S. 1 (1929); *First English Lutheran Church* v. *Evangelical Lutheran Synod*, 135 F. 2d 701 (1943); *Romanian Orthodox Missionary Episcopate* v. *Trutza*, 205 F. 2d 107 (1953).

Bear v. *Heasley*, 98 Mich. 297, 57 M. W. 270 (1893); *Horsman* v. *Allen*, 129 Cal. 131, 61 Pac. 798 (1900); *McNeilly* v. *First Presbyterian Church in Brookline*, 243 Mass. 331, 137 N. E. 691 (1923); *Kreker* v. *Shirey*, 163 Pa. 534, 30 A. 440 (1894); *Kicinko* v. *Petruska*, 102 A. 286 (Pa. 1917); *Trustees of Pencader Presbyterian Church in Pencader* v. *Gibson*, 22 A. 2d 782 (Del. 1941); *Stewart* v. *Jarriel*, 206 Ga. 855, 59 S. E. 2d 368 (1950); *Church of God of Markleysburg* v. *Church of God at Markleysburg*, 50 A. 2d 357 (Pa. 1947).

The actions of the presbyteries would then have to be considered by the General Assembly.[14]

What the Petitioner church rejected was meticulously followed by the Cumberland Presbyterian Church in *Mack* v. *Kime*, supra.

THE WALL OF SEPARATION IS NOT SO IMPREGNABLE THAT A DENOMINATIONAL CHURCH IS NOT SUBJECT TO REASONABLE RESTRAINTS UPON THE LIBERTIES GUARANTEED BY THE FIRST AMENDMENT

> "The structure of our government has, for the preservation of civil liberty, rescued the temporal institutions from religious interference. ! ."

Chancellor Johnson, *Harmon* v. *Dreher*, 17 S. C. eq. 87, 120 (1843) S. C. Quoted by Mr. Justice Miller in *Watson* v. *Jones*, supra.

> "Laws are made for the government of actions, and while they cannot interfere with mere religious beliefs and opinions, they may with practices. . . Can a man excuse his practices to the contrary because of his religious belief? To permit this would be to make the professed doctrines of religious belief superior to the law of the land, and in effect to permit every citizen to become a law unto himself. Government could exist only in name under such circumstances."

Abington School District v. *Schempp*, 374 U. S. 203 (1963). Quoted by Mr. Justice Brennan from *Reynolds v. United States*, 98 U. S. 145, 166, 167 (1878).

Assuming that the decision of the Supreme Court of Georgia, impinged upon the First Amendment, which is denied, does the immunity granted by it insulate the Petitioner church from the limitations expressed in the above

14. Book of Church Order, Ch. XXX, Par. 1-2.

quotations? In finding that the Petitioner church had violated its Confession of Faith and Book of Church Order,[15] the Supreme Court of Georgia appropriately asserted:

> "The General Assembly's endorsement of civil disobedience, which would allow a citizen to decide whether or not he will obey the law, is a radical venture into civil affairs. It is absolute defiance of law and order and is the road to anarchy."[16]

What provoked this accusatory prophecy? The pronouncements made by the General Assembly of the Petitioner, the highest church judicatory, at its General Convention of 1965 and 1966:

> "Yet, when due course of civil law is denied or abridged, the Christian, for whom 'God alone is Lord of Conscience,' may validly appeal to the Higher Law, led by the inner witness of the Holy Spirit, speaking in and through the scriptures. This great ordering Word may lead him against the world, against the establishment of the civil magistrates. But he should be very cautious about taking such a lonely position and should hold it only in fear and trembling. If it leads him into civil disobedience, he should not try to justify his position before men. He has violated the law, the public

15. "Synods and councils are to handle or conclude nothing but that which is ecclesiastical; and are not to intermeddle with civil affairs which concern the commonwealth unless by way of humble petition in cases extraordinary; or by way of advice by the civil magistrate," (Ch. XXXIII, par. 4).

"It is the duty of the people to pray for magistrates, to honor their persons, to pay them tribute and other dues, to obey their lawful commands, and to be subject to their authority, for conscience' sake. Infidelity, or difference in religion, doth not make void the magistrate's just and legal authority, nor free the people from their due obedience to him; from which ecclesiastical persons are not exempted . . ." (Ch. XXV, par. 4).

"The power which Christ has given his Church is wholly moral and spiritual, and constitutes the Church a kingdom and government distinct from the civil commonwealth. . . ." (Ch. I, ¶ 1-2).

16. 224 Ga. 61, 77, 159 S. E. 2d 690, 700.

standard of justice, and hence must recognize his liability to the judgment of the civil court." (1965)

"(3) To regard civil disobedience as a measure of last resort to be employed only in circumstances of otherwise irremediable deed, and in the exercise of which the whole concept of law is not denied, but affirmed; and (4) To continue to support and regard with compassion those who practice civil disobedience when no legal recourse has been left open to them and who act in Christian conscience and allegiance to Almighty God." (1966)

In *Abington School District*, Mr. Justice Brennen formulated his own trichotomy in which he classified religious questions involving the First Amendment. Clearly, under the actions of the General Assembly of the Petitioner, the third principle is the one that should be invoked by this Court. Mr. Justice Brennen quoted approvingly from *Davis* v. *Beason*, 133 U. S. 333 (1890):

"It was never intended or supposed that the amendment (First) could be invoked as a protection against legislation for the punishment of acts inimical to the peace, good order, and morals of society."

See also *Church of Jesus Christ of L. D. S.* v. *United States*, 136 U. S. 1 (1890); *Cantwell* v. *State of Connecticut*, 310 U. S. 296 (1940); and *Prince* v. *Massachusetts*, 321 U. S. 158 (1944).

More recently this Court has reiterated its disapproval of conduct inimical to the peace and good order of society. In reversing the Supreme Court of Louisiana in *Cox* v. *Louisiana*, 379 U. S. 559 (1965), Mr. Justice Goldberg, speaking for the majority, stated at page 574:

"Liberty can only be exercised in a system of law which safeguards order. . . We also reaffirm the repeated decisions of this Court that there is no place for violence in a democratic society dedicated to liberty

> under the law, and that the right of peaceful protest does not mean that everyone with opinions or beliefs to express may do so at any time and at any place. There is a proper time and place for even the most peaceful protest and a plain duty and responsibility on the part of all citizens to obey all valid laws and regulations."

What was expressed by Mr. Justice Goldberg in *Cox* was vigorously supported by Mr. Justice Black in his dissenting opinion in *Brown* v. *Louisiana*, 383 U. S. 131 (1966). At page 168 he declared:

> "Governments like ours were formed to substitute the rule of law for the rule of force. . . . But I say once more that the crowd moved by noble ideals today, can become the mob ruled by hate and passion and greed and violence tomorrow. The holding in this case today, makes it more necessary than ever that we stop and look more closely at where we are going."

The stern expressions of this Court firmly positioning itself on civil disobedience affirms the conceptual analysis of Mr. Justice Roberts in *Cantwell* v. *State of Connecticut*, supra. At pages 303 and 304, he stated:

> "Thus the amendment (First) embraces two concepts, freedom to believe and freedom to act. The first is absolute, but in the nature of things, the second can not be. Conduct remains subject to regulation for the protection of society."

It is the second concept which is before this Court. It is here because of the conduct of the highest judicatory of the Petitioner church.

Can it now raise the wall of separation of church and state which it breached by its actions? By the sword of political involvement, it has jeopardized the security of our nation, but when charged with the indictment of advocating lawlessness, it seeks to raise the shield of separation. The

authors of the First Amendent did not envisage a church immune from abiding by the lawful ordinances imposed by the civil magistrate.

If the restraint of the law is removed from ecclesiastical institutions, a fatal thrust will have been made into the heart of the philosophy of government as conceived by our forefathers. For surely, as feared, ours will become a government of men, and not of laws. The anarchy prophesied by the Supreme Court of Georgia will be followed by tyranny. History affirms.

The condemnation of this Court by civil disobedience was recently underscored in a speech by the Honorable Erwin N. Griswold, the Solicitor General of the United States. Speaking at Tulane University Law School, he charged:

> "I believe the current rhetoric—which sometimes seems to consecrate 'civil disobedience' as the noblest response in the pantheon of virtues—has obscured the nature and consequence of this activity. To define my term—I mean by 'civil disobedience' the deliberate violation of a rule ordained by constituted government because of a conscientious conviction that the law is so unjust that it cannot morally be observed by the individual. . ."

THE PRONOUNCEMENTS OF THE GENERAL ASSEMBLY OF THE PETITIONER CHURCH ON CIVIL DISOBEDIENCE WERE VIOLATIONS OF THE CHURCH'S CONSTITUTION

The Petitioners in evaluating the significance of the pronouncements made by the General Assembly of the Petitioner church in 1965 and 1966 concerning civil disobedience ignored the authority of the General Assembly. It is the voice. The lesser tribunals are committed in policy and position by it. Departures occur when this omnipotent voice speaks. This was the thesis upon which *Watson* v.

Jones, supra, was decided. The power vested in the General Assembly has been affirmed in *St. John's Presbytery* v. *Central Presbyterian Church of St. Petersburg*, 102 So. 2d 114 (Fla. 1940)

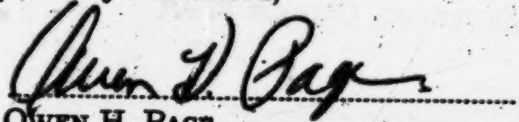
It must follow then that the actions of the General Assembly in 1965 and 1966 are not simple statements of "points of view" though the Petitioners may wish them in that harmless category. They constitute conscious violations of the Confession of Faith and Book of Church Order of the Petitioner church.

> "The church can not redeem society by political action; when evangelism becomes politics, it is no longer the Gospel of Christ's Kingdom."[17]

CONCLUSION

For the foregoing reasons, the petition for a Writ of Certiorari should be denied.

Respectfully submitted,



OWEN H. PAGE
Counsel for Respondent Eastern Heights Presbyterian Church et al.

17. *Christianity Today*, April 28, 1967.

CERTIFICATE OF SERVICE

This is to certify that I have this day served Mr. Frank S. Cheatham, Jr., 32 East Bay Street, Savannah, Georgia 31401, and Mr. Charles L. Gowan, 434 Trust Company of Georgia Building, Atlanta, Georgia 30303, attorneys for the Petitioners, in the foregoing matter with a copy of this brief by depositing in the United States mail a copy of the same in a properly addressed envelope with adequate postage thereon.

This 25 day of May, 1968.

Owen H. Page

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1968

No. [redacted] 71

PRESBYTERIAN CHURCH IN THE UNITED STATES and J. LEHMON BRANTLEY, Chairman of the Administrative Commission of the Presbytery of Savannah,
Petitioners,
vs.
MARY ELIZABETH BLUE HULL MEMORIAL PRESBYTERIAN CHURCH,
Respondent,
AND
PRESBYTERIAN CHURCH IN THE UNITED STATES and J. LEHMON BRANTLEY, Chairman of the Administrative Commission of the Presbytery of Savannah,
Petitioners,
vs.
EASTERN HEIGHTS PRESBYTERIAN CHURCH and FRANK L. PERRY, SR., JOHN BRUNING, LESTER R. SARGENT, HARDIN C. NORMAN and ARMIN S. HUBERT, Trustees,
Respondents

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF GEORGIA

BRIEF OF RESPONDENT, MARY ELIZABETH BLUE HULL MEMORIAL PRESBYTERIAN CHURCH

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1967

No. 1380

PRESBYTERIAN CHURCH IN THE UNITED STATES and J. LEHMON BRANTLEY, Chairman of the Administrative Commission of the Presbytery of Savannah,
Petitioners,

vs.

MARY ELIZABETH BLUE HULL MEMORIAL PRESBYTERIAN CHURCH,
Respondent,

AND

PRESBYTERIAN CHURCH IN THE UNITED STATES and J. LEHMON BRANTLEY, Chairman of the Administrative Commission of the Presbytery of Savannah,
Petitioners,

vs.

EASTERN HEIGHTS PRESBYTERIAN CHURCH and FRANK L. PERRY, SR., JOHN BRUNING, LESTER R. SARGENT, HARDIN C. NORMAN and ARMIN S. HUBERT, Trustees,
Respondents

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF GEORGIA

BRIEF OF RESPONDENT, MARY ELIZABETH BLUE HULL MEMORIAL PRESBYTERIAN CHURCH

STATEMENT OF THE CASE

Mary Elizabeth Blue Hull Memorial Presbyterian Church filed an action in Chatham County, Georgia Superior Court asking that Petitioners be enjoined from a threatened eviction of Respondent from its Church property. Petitioners filed an answer and cross action praying that the Respondent be enjoined from the use of Respondent's property. Respondent had formerly been affiliated with Petitioner Church but had withdrawn due to action by Petitioner Church making it impossible for Respondent to retain its affiliation and at the same time remain true to the doctrine, tenets and beliefs of the Presbyterian Church as practiced and taught at the time of its affiliation in 1890.

Respondent is a Georgia Corporation incorporated in 1914 pursuant to the provisions of the Georgia Religion Corporation Act, 1933 Code of Georgia Section 22-401. Unlike most new Presbyterian Churches, which are usually formed by the various Presbyteries, Respondent Church had been established in 1868 by the Independent Presbyterian Church of Savannah, which is not a member of Petitioner Church, although it contributed to Petitioner Church on a voluntary basis. Respondent later became an independent church and operated as such until 1890 at which time it joined the Savannah Presbytery of the Presbyterian Church In The United States.

At no time during its existence either as a mission or independent Presbyterian Church, or as an affiliated Church with Petitioners, have any of Petitioners ever contributed any sums of money in any amount for the formation of the Church, the acquisition of the property involved, the erection of Church buildings, the maintenance and operation of the Church, the upkeep of the Church property, or for any other reason; nor had it ever exercised any control over Respondent's property.

In 1890, the date of its affiliation with Petitioner Church, both Petitioners and Respondent used as its Articles of Faith the Presbyterian Confession of Faith, the Larger and Shorter Catechisms and the Holy Bible. These documents, along with the Book of Church Order, constitutes the Church Constitution. The Constitution contains clear provisions prohibiting the Church from meddling in civil affairs, and requiring its members to obey the civil law. It further provides a means

of amending its Constitution. Disregarding the amendatory process, Petitioner Church in recent years has abandoned these doctrines and openly advised its members that they are free to violate the laws of the land and disregard its own Constitutional prohibitions where the individual members feel there is moral justification. The Petitioners have made pronouncements condemning our Country's participation in the war against the spread of Communism in Viet Nam. Respondent Church has adhered to the doctrines and beliefs of the Church as provided by the Constitution.

Due to the deviations from its Constitution by Petitioners, Respondent Church was placed in a position of having to either accept these unconstitutional acts and become a party to them or withdraw. Not willing to compromise its beliefs and its adherence to its Constitution, Respondent withdrew its affiliation with Petitioner Church by resolution of its congregation in 1967. They were then notified by Petitioner Church that Petitioner Church was laying claim to the Church property of Respondent corporation and Respondent was notified to vacate. An injunction was filed by Respondent asking that this be prevented and Petitioners filed a cross action asking the Court to declare the property theirs, even though no member of Respondent corporation joined in the suit with Petitioners. The case came on for hearing in the Superior Court of Chatham County, Georgia and the jury returned a verdict for the Respondent; judgment taken. The Petitioners appealed to the Supreme Court of Georgia which sustained the judgment of the trial court. The Petitioners then filed a motion for rehearing and for the first time raised the Federal question. The Supreme Court of Georgia denied the motion.

QUESTIONS PRESENTED

I.

Will this Court review or revise the decisions of the Supreme Court of Georgia where no constitutional question was raised until the motion for a rehearing in the Supreme Court of Georgia, although Petitioners had the opportunity in the trial court to raise the questions and no existing remedies were denied Petitioners.

II.

Can Petitioners contest the jurisdiction of the civil court

where they had prayed for affirmative relief invoking the rulings by the civil court as to the matters now complained of.

III.

Can a denomination, such as the "Presbyterian Church In The United States," take control of property belonging to a local congregation so as to require the property of the latter to be used for propagation of doctrines in conflict with the denomination as accepted at the time the local congregation united with the denomination, without amending its Constitution.

I.

Federal Question Not Raised in Time

No Constitutional or Federal question was ever raised by the Petitioners until the motion for rehearing in the Supreme Court of Georgia at which time they maintained that the relief sought by the plaintiffs in the Court below would controvert the First and Fourteenth Amendments to the Constitution of the United States and destroy the separation between Church and State even though the Petitioners themselves had filed a cross action in the trial court and prayed for affirmative relief.

The Petitioners contend that the Federal question was timely presented on the ground that the decision of the Supreme Court of Georgia overruled *Mack vs. Kime.* However the Supreme Court of Georgia in *Mack vs. Kime,* 129 Ga. 1 (2) (58 SE 184, 24 LRA (NS) 675), held:

> "The general rlue is that where property rights are involved, the civil courts will interfere to protect the members of an ecclesiastical organization who adhere to the tenets and doctrines which the organization was organized to promulgate, and protect them in the right to use the property, as against those members of the organization who are attempting to divert the same to purposes utterly foreign . . ." See also *Tucker vs. Paulk,* 148 Ga. 228 (3) (96 SE 339), where this court approved the trial court's finding on whether the plaintiffs had "departed from the organization and doctrine of the church."

The only point overruled by the Supreme Court of Georgia in the present case was the degree of abandonment or departure necessary for relief and this was only an interpretation by the Court of its previous ruling.

The *Mack* case, in discussing the degree of abandonment or departure necessary to obtain protection, uses terminology

such as "complete abandonment," "purposes utterly foreign," "entirely abandon," and "abandon altogether." We disagree. We do not believe that "complete" or like degree of abandonment or departure is necessary for relief. To the extent that *Mack vs. Kime*, 129 Ga. 1, supra, requires such standard, it is expressly overruled.

The Civil Courts of Georgia have always ruled that when property rights are involved civil courts will protect them against wrongful diversion.

1933 Code of Georgia Annotated, Section 22-408 provides:

> "Courts are reluctant to interpose in questions affecting the management of the temporalities of a church; but when property is devoted to a specific doctrine or purpose, the courts will prevent it from being diverted from the trust."

The Supreme Court of Georgia said in *Dowdell et al vs Cherry et al., trustees*, 209 Ga. 849:

> "While courts are reluctant to interfere in questions affecting the internal affairs of a religious organization, nevertheless, where property has been conveyed in trust for the use and benefit of a church, a court of equity will assume jurisdiction for the purpose of preventing a diversion of the trust."

and in *Chatfield vs. Dennington et al*, 206 Ga. 762 the Supreme Court of Georgia said:

> "3. While courts are reluctant to interpose in questions affecting the management of the temporalities of a church where property is devoted to a specific doctrine or purpose, the Courts will prevent it from being diverted from the trust."

The degree of abandonment or departure necessary to be shown to obtain protection in civil courts would not be a Federal question and we respectfully maintain that there is no Federal question involved. The interpretation by the Courts of the State of the written and unwritten laws of the State is not reviewable by the Supreme Court of the United States.

II.

Petitioners Themselves Invoked Civil Court Ruling

The Petitioners contend that the decision of the Supreme Court of Georgia would breach the wall that has historically separated the Church from the State in this Country and would allow civil courts to enter the ecclesiastical field. The Petitioners however had filed a cross action to the Respondent's

petition and had prayed for affirmative relief involving the rulings by the civil court on the question they now complain of. We cannot understand how the Petitioners could come into Court, pray for relief and after the matter had been adjudicated in the civil courts then deny that the civil courts had jurisdiction to hear the matter.

III.

Denominations Must Adhere to It's Constitution

Does the denomination have the right to violate its established Constitution and force a member Church to accept the unlawful acts or in the alternative lose its property.

No denomination can exercise its share of control over a local congregation so as to require the property of the latter to be used for propagation of doctrines in conflict with the fundamental teachings of the denomination as accepted at the time the local congregation united with the denomination. 76 Corpus Juris Secumdem, Section 70, Religious Societies.

The separation of Church and State is a dual obligation. The Constitution of the Presbyterian Church in the United States provided in unquestioned terms that the Church shall not meddle in civil affairs. To allow this to happen would invite disaster and a breakdown in the separation of Church and State.

Questions pertaining to strictly religious matters are left to church tribunals where property rights are not involved where the church doctrines do not violate the law of the land and where the denomination does not exceed its authority under its Constitution. Civil courts do have jurisdiction and have accepted such jurisdiction many times to protect a minority who are being forced to withdraw or adhere to doctrines in conflict with the fundamental teachings of the denomination as accepted at the time the local Church united with the denomination. *Church of God at Markleysberg vs. Church of God at Markleysberg*, 50 Atlantic 2nd 357; *Bear vs. Heasley*, 57 N.W. 270; *Lemp vs. Raven*, 71 N.W. 627. To what extent the civil court will intercede to prevent the unlawful or unconstitutional acts is a matter of State law. "Except in matters governed by the Federal Constitution and by acts of Congress, the law to be applied in any case is the law of the State, and whether the State law shall be declared by its legislature in a statute or by its highest Court in a decision is not a matter of

Federal concern." *Erie Railroad Company vs. Harry J. Tompkins*, 304 U. S. 64.

The real question in the matter is whether the State has the right to interpret its own Statute, common law and its previous decisions. *Mack vs. Kime*, supra, was a Georgia case in which the Georgia Supreme Court found that the Constitutional provision of two merging bodies had been complied with. It discussed points of alleged deviations; however, it declined to base its ruling on the deviation question. It stated by way of dictum that the rule is total deviation in the case of a local church.

Petitioners quoted citations which they contend rule in no event can the deviations be sufficient. Their contention is that regardless of what steps are taken by the denomination and regardless of how far the denomination deviates, there can be no relief for a member Church and further that the State can make no provision or hand down any decision repecting deviations. *Mack vs. Kime*; *Watson vs. Jones*, 80 (13 Wall) US 679 (1871); *St. John's Presbytery vs. Central Presbyterian Church of St. Petersburg*, 102 So 2nd 714 (Fla. 1958).

Mack vs. Kime was decided on the issue of conformity with the Church Constitution and the Georgia Court found that the Constitution had been complied with. *Watson vs. Jones* was decided before *Erie vs. Tompkins* and is now limited by State law. These cases also involved split congregations where minority rights of the congregations needed protecting. *St. John's* was a State decision and turned on the language in the deed which contained a trust clause in favor of the denomination and furthermore involved church property that had been paid for by the Presbytery.

We do not believe that a State Court cannot intervene to protect property rights of a minority where the majority substantially deviates.

The proposition that the deviation must be total is unrealistic. If the language in *Mack vs. Kime* constituted this rule there is no doubt that the State Court has the right to modify the rule if it is unrealistic and unjust, just as this Court overruled *Swift vs. Tyson* in the *Erie Railroad vs. Tompkins* case. Under the so-called "Total Deviation" rule a local Church could be made to accept many propositions completely foreign

to the tenets and doctrine of the Church at the time of its affiliation. The highest Court in Georgia has ruled that the deviation need not be total, but must be substantial and to reverse that decision would be interpreting the Georgia law by the Federal Court and would take from the State the righ to decide what its law is. This Court has recognized in previous cases that the process of trial and error, of change of decision, in order to conform with changing ideas and conditions is traditional with courts administering the common law. Since it is for the State courts to interpret and declare the law of the State, it is for them to correct their errors and declare what the law has been as well as what it is. State courts, like this Court may ordinarily overrule their own decisions without offending the Constitutional guaranties, even though parties may have acted to their prejudice in the faith of the earlier decisions. *Brinkerhoff-Farris Trust and Savings Co. vs. Hill*, 74 L. ed., page 1114, 281 U. S. 673 (Note 8).

The local Church alleged and proved, without contradictory evidence by Petitioners, certain deviations that constitute a substantial abandonment of doctrines and tenets of the Church as practiced in 1890, the date of its affiliation. These abandonments were not the result of Constitutional amendments even though the Church Constitution provided a method for amending its Constitution. The local Church objected to the endorsing of civil disobedience and the violating of the laws of the land as a material departure from the fundamental beliefs of the Presbyterian Church as professed in 1890 in that the Westminster Confession of Faith states:

> "It is the duty of the people to pray for magistrates, to honor their persons, to pay them tribute and other dues, to obey their lawful commands, and to be subject to their authority, for conscience sake. Infidelity, or difference in religion, doth not make void the magistrate's just and legal authority, nor free the people from their due obedience to him: from which ecclesiastical persons are not exempted; much less hath the Pope any power or jurisdiction over them in their dominions, or over any of their people; and least of all to deprive them of their dominions or lives, if he shall judge them to be heretics, or upon any other pretense, whatsoever."

The Presbyterian Church In The United States by encouraging civil disobedience violated one of the basic beliefs of the faith in passing a resolution by the General Assembly endorsing civil disobedience, part of which provided:

"Civil Disobedience: The Christian and the State

This brings to us the problem of civil disobedience; the open, non-violent and conscientious refusal to obey a law or laws, as a means of appeal to a higher law, combined with the willing acceptance of the penalty. It is an extreme demonstration of dissatisfaction with some aspect of society. It also presents in its purest form the problem of the relation of the Christian to the State." The resolution further stated in part:

"It is true that within our system of government, means are provided, through the law, to present and adjudicate grievances for such injustices. Yet when due course of civil law is denied or abridged, the Christian, for whom 'God alone is Lord of conscience,' may validly appeal to the Higher Law, led by the inner witness of the Holy Spirit, speaking in and through the scriptures. This great ordering Word may lead him against the world, against the establishment of the civil magistrates. But he should be very cautious about taking such a lonely position and should hold it only in fear and trembling. If it leads him into civil disobedience, he should not try to justify his position before men. He had violated the law, the public standard of justice, and hence must recognize his liability to the judgment of the civil court.

The church exist to unite men by God's grace with themselves, with God, and with their fellowmen—to make them whole. Therefore, it should give the support of Christian compassion to any member who, following his conscience in obedience to the Word, engages in civil disobedience."

The local Church further objected that the ordaining of women as preachers and ruling elders was a violation of its Constitution. This was a direct violation of the Westminster Confession of Faith and the Book of Church Order and although peculiar to the Presbyterian faith in existence in 1890 and a deviation therefrom by the national Church is an unlawful infringement upon rights of the local believers.

The ruling that a majority of a Church cannot substantially deviate from the faith and force a minority to accept doctrines alien to its established tenets without first amending its Constitution in no way violates the separation of Church

and State. The underlying reasons behind the Church's Constitutional provisions that have been violated was to prevent a clash with the State.

For Churches to be used as political levers in civil matters will bring chaos if followed to its logical conclusion. "Give unto Ceasar that which is Ceasars" was a wise rule. The Westminster divines which formulated the Presbyterian Confession of Faith recognised this when they provided that Presbyterians were to obey the civil magistrate. Presbyterians and other Christians migrated to this Country to escape State established Churches so that they could worship without interference from the State. They knew that this meant that they in turn could not interfere or meddle in civil affairs if they wished to remain separated from the State. This is a basic tenet of their faith and there is no violation of the establishment clause or the free exercise clause of the First Amendment to the United States Constitution for a State Court to rule that the property rights of a minority group will be protected.

Petitioners argue that Secular Courts will necessarily violate the establishment clause and the free exercise clause of the United States Constitution in any case involving a deviation from the faith. In the Supplemental Opinion on Rehearing before the Supreme Court of Arkansas in the case of *Holiman vs. Dovers*, decided in 1963, 366 S.W. 2nd 197, "15 ALR 3rd 277," Mr. Justice George Rose Smith declared that it is unquestionably the duty of the Courts to decide legal questions involving the ownership and control of Church property, *regardless of the form of ecclesastical government that may be in effect.* He further stated that a local Church could secede but could not take the Church property with it where the effect of that action would be to devote the property to doctrine fundamentally different from those to which the property was dedicated. Conversely, if it is the parent organization that har separated from the basic articles of faith, the local Church has the right to secede and retain its property, citing *Boyles vs. Roberts*, 222 Mo. 618, 121 S.W. 805. Mr. Justice Smith referred to the Iowa rule, where a majority being accused by the minority, the accused sit in judgment which it declares in its favor, and then pleads the judgment it declares as conclusive of its innocence, because no other man or body of men has authority to interfere. However such a rule may serve in purely eccles-

astical relations, we unhesitatingly say the civil law will not adhere to it where the result is to divert trust property from its proper channel. *Mt. Zion Baptist Church vs. Whitmore*, 83 Iowa 138, 49 N.W. 81. An appendix attached to the case of *Hollman vs. Bowers* list 27 jurisdictions which have decided this question, 25 of which hold that the courts will enjoin the majority faction from devoting the Church property to purposes constituting a fundamental departure from the traditional faith, customs, usages, and practices of the Church, including *Chatfield vs. Donnington*, 206 Ga. 762.

Is it true, as Petitioners argue, that whether there is a violation of the Constitutional amendment respecting the separation of Church and State is determined by the type of Church government? Can Secular Courts decide property rights in a congregational form of Church government case but cannot do so where another form of Church government is involved? We do not believe that the Constitutional provision, which in essence requires neutrality, depends on the mode of Church government. In a congregational type Church a majority of the congregaiton rules. The majority constitutes the highest authority in that particular Church and is equivalent to the General Assembly of the Presbyterian Church In The United States in this respect. If a constructive trust has been created in the case Sub Justice, the Courts can intervene to prevent the General Assembly from devoting the property to purposes constituting a fundamental departure from the faith, customs, usages, and practices of the Church the same as it can in a congregational Church.

CONCLUSION

WHEREFORE the Respondent would respectfully request that there being no Federal question involved and the effort to raise same not being timely, that the Certiorari be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I Richard T. Cowan, of counsel for Respondent, hereby certify that I have served a copy of the foregoing Brief for denial of the Writ of Certiorari by depositing a copy of the same in the United States Mail, properly stamped and addressed, to each of the following:

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Frank S. Cheatham, Jr.
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This 24th day of May, 1968.

Richard T. Cowan

MOTION FILED

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JUL 17 1968 SUPREME COURT, U. S.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1968

[redacted] 71

PRESBYTERIAN CHURCH IN THE UNITED STATES and J. LEHMON BRANTLEY, Chairman of the Administrative Commission of the Presbytery of Savannah,

Appellants,

vs.

MARY ELIZABETH BLUE HULL MEMORIAL PRESBYTERIAN CHURCH,

Appellee,

and

PRESBYTERIAN CHURCH IN THE UNITED STATES and J. LEHMON BRANTLEY, Chairman of the Administrative Commission of the Presbytery of Savannah,

Appellants,

vs.

EASTERN HEIGHTS PRESBYTERIAN CHURCH and FRANK L. PERRY SR., JOHN BRUNING, LESTER R. SARGENT, HARDIN C. NORMAN and ARMIN S. HUBERT, Trustees,

Appellees.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF GEORGIA

MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE AND BRIEF AMICUS CURIAE ON BEHALF OF THE RIGHT REVEREND JOHN E. HINES, PRESIDING BISHOP OF THE PROTESTANT EPISCOPAL CHURCH IN THE UNITED STATES OF AMERICA

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1967

No. 1380

PRESBYTERIAN CHURCH IN THE UNITED STATES and J. LEHMON BRANTLEY, Chairman of the Administrative Commission of the Presbytery of Savannah,

Appellants,

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PRESBYTERIAN CHURCH IN THE UNITED STATES and J. LEHMON BRANTLEY, Chairman of the Administrative Commission of the Presbytery of Savannah,

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The Presiding Bishop respectfully moves for leave to file a brief amicus curiae in support of the Appellants in these causes.

In support of such motion the Presiding Bishop respectfully states as follows:

INTEREST OF AMICUS CURIAE

The Protestant Episcopal Church in the United States, hereinafter called the Episcopal Church, like the Presbyterian Church in the United States, is a hierarchical church in that it is an organized ecclesiastical body the General Convention of which is charged with the government of the church (Constitution and Canons, copies of which are submitted with this brief).

On the termination of the War of Independence and the acknowledgment by Great Britain of the independence of America, difficulty arose. Relief was obtained by the passing of an act of Parliament allowing the Bishop of London to ordain, without requiring promises of allegiance to the British crown, several men who had gone to England for that purpose. This was but a partial relief and the need of an episcopate was now more felt than before the war. The Church was destitute of unity, government, provision for its clergy and incapable of acting to any advantage or preserving uniformity in the public services.

To remedy these evils a meeting was held in May, 1784, of a few clergy from New York, New Jersey and Pennsylvania, at which another meeting was called in the following October in New York. Resort was thereafter had to the Church in Scotland, where Samuel Seabury received consecration as a bishop in November, 1784.

Two subsequent General Conventions were held in 1785 and 1786.

Dr. Provost and Dr. White having been elected Bishops of New York and of Pennsylvania, and Dr. Griffith Bishop of Virginia, testimonials in their favor were signed by the Convention. The two former sailed for England in Novem-

ber, 1786, and were consecrated at Lambeth, and in the following year Dr. Griffith was consecrated by the Archbishop of Canterbury.

There being then three bishops, the General Convention again assembled in July, 1789, and adopted the Constitution and Canons, as subsequently amended and supplemented at subsequent General Conventions.

At the General Convention of 1967 the following preamble of the Constiiution was adopted:

> "The Protestant Episcopal Church in the United States of America, otherwise known as The Episcopal Church (which name is hereby recognized as also designating the Church), is a constituent member of the Anglican Communion, a Fellowship within the One, Holy, Catholic, and Apostolic Church, of those duly constituted Dioceses, Provinces, and regional Churches in communion with the See of Canterbury, upholding and propagating the historic Faith and Order as set forth in the Book of Common Prayer. This Constitution, adopted in General Convention in Philadelphia in October, 1789, as amended in subsequent General Conventions, sets forth the basic Articles for the government of this Church, and of its overseas missionary jurisdictions."

Furthermore, in the preface to the Book of Common Prayer adopted at the General Convention of 1789, these words are found:

> "It seems unnecessary to enumerate all the different alterations and amendments. They will appear, and it is to be hoped, the reasons of them also, upon a comparison of this with the Book of Common Prayer of the Church of England. In which it will also appear that this Church is far from intending to depart from the Church of England in any essential point of doctrine, discipline, or worship; or further than local circumstances require."

There have at all times been three orders of the clergy: bishops, presbyters and deacons; while the General Convention consists of a House of Bishops and a House of Clerical and Lay Deputies elected by the several dioceses

and missionary districts, bringing the church within the definition of a hierarchy as defined in Webster's Collegiate Dictionary as a body of officials (esp. ecclesiastical) in successive ranks or government by such a body.

The church itself is divided into dioceses and missionary districts presided over by a bishop, each holding an annual convention or convocation presided over by the bishop, made up of clerical and lay delegates elected by each parish and mission having, subject to the Constitution and Canons of General Convention, legislative powers for the government of the diocese or missionary district.

In 1570 an Act of Parliament forbade all leases, gifts, grants, feoffments and conveyances of real property devoted to religious uses "other than for the Term of one and twenty Years, or three lives, from the Time as such Lease or Grant shall be made or granted". 13 Eliza. c 10.

The purpose of the act is stated in the preamble and is germane to the situation presented by these causes as it was to the conditions in England four centuries ago which it was enacted to correct.

Those in possession of property devoted to religious and charitable uses were allowing the fabric to fall into disrepair and then selling the lead and other building material. They were also conveying property to third parties, and thereby diverting it from the use to which it had been solemnly dedicated. Such conveyances, except as expressly authorized by the statute of Elizabeth, were thereafter forbidden.

Just prior to the American Revolution a statute was enacted, 5 Geo. III, 17, which affirmed leases made in accordance with the statute of Elizabeth and re-enacted the same limitations.

The statute of Elizabeth and subsequent statutes to the same effect have been held to constitute a part of our common law. (*M. A. Baptist Church* v. *Baptist Church in O. St.*, 46 N. Y. 131, 141). This has been demonstrated historically by the fact that prior to the enactment of

Chapter 43 of the Laws of 1806, which has come down to us in Section 12 of the Religious Corporations Law of New York it was necessary for the trustees of a religious corporation to petition the Legislature and ask the passage of a special act before they could sell any real property belonging to the corporation.

The line of such special acts stretching from 1703 to 1806 shows church property at common law can only be diverted to other uses pursuant to a special act of the Legislature.

The acts of Elizabeth and George III were in line with the tradition of the church in England that upon consecration of a church it became the property of the saint in whose name it was consecrated.

The rule of inalienability has been codified in Canon 6, Sec. 3 of the General Canons, as follows:

> "Sec. 3 No Vestry, Trustee or other body, authorized by Civil or Canon law to hold, manage or administer real property for any Parish, Mission, Congregation, or Institution, shall encumber or alienate the same or any part thereof without the consent of the Bishop and Standing Committee of the Diocese, or the Bishop and Council of Advice of the Missionary District, of which the Parish, Mission, Congregation, or Institution is a part, except under such regulations as may be prescribed by Canon of the Diocese or Missionary District."

The Book of Common Prayer of the Episcopal Church contains a service entitled "The Form of Consecration of a Church or Chapel." At page 566 the following rubric is found:

> "Then, the Bishop sitting in his chair, the Sentence of Consecration is to be read by some person appointed by him, and then laid by him upon the Communion Table; after which, the Bishop shall say,
>
> " 'Blessed be thy Name, O Lord, that it hath pleased thee to put into the hearts of thy servants to appropriate and devote this house to thy honour and worship; and grant that all who shall enjoy the

benefit of this pious work, may show forth their thankfulness by making a right use of it, to the glory of thy blessed Name; through Jesus Christ our Lord. Amen.' "

A copy of the instrument of donation by the rector, wardens and vestrymen of the parish and of the sentence of consecration are annexed hereto as Appendix 1 and 2.

In *Fiske v. Beatty*, 206 App. Div. 349, aff'd 238 N. Y. 598, which involved the power of a bishop to refuse to institute a priest as rector of a parish under General Canon 39 (now 46), the Appellate Division wrote as follows:

> "The true doctrine of the Protestant Episcopal Church in America, in relation to the sources of power of a priest or rector, as we understand it, is correctly expressed as follows: 'In the Church, power does not *ascend* from the congregation or the vestry to the rector; it *descends* from above to the Bishop and through the Bishop to the subordinate ministry' (White's Church Law (ed. 1898) 185)." (p. 356, emphasis in original)

In *Rector, etc., of Church of Holy Trinity* v. *Melish*, 194 Misc. 1006, aff'd 276 App. Div. 1088, leave to appeal denied 277 App. Div. 783, appeal dismissed 301 N. Y. 679, certiorari denied 340 U. S. 936, which involved the power of the bishop to dissolve the pastoral relationship between a rector and an incorporated parish under present Canon 30 of the diocesan canons (appendix 3 to this brief) the Special Term at page 1016 quoted and relied upon the decision of this Court in *Watson* v. *Jones*, 80 (13 Wall) U. S. 679.

ARGUMENT

The opinion of the Supreme Court of Georgia in the causes now under review is in direct conflict with decisions of this Court, *Watson* v. *Jones, supra, Kedroff* v. *St. Nicholas Cathedral,* 344 U. S. 94; *Kreshik* v. *St. Nicholas Cathedral,* 363 U. S. 190.

The facts in these causes are fully stated in the petition for the writ of certiorari, to which the amicus curiae begs leave to refer as if incorporated herein.

Rather than submit a lengthy brief upon the facts and law, the amicus curiae joins in all that is stated in the brief submitted by the appellants, adding only the vital importance of the decision of this Court to this hierarchical church.

Affirmance would vest in contumacious congregations the right of secession from the national church of any parish dissatisfied with an action of the governing body to which the Constitution and Canons of the Episcopal Church subject them, and destroy its hierarchical nature and quality.

Respectfully submitted,

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Attorneys for the Presiding
Bishop of The Protestant
Episcopal Church in the
United States of America

CERTIFICATE OF SERVICE

I, JACKSON A. DYKMAN, of counsel for the Presiding Bishop, hereby certify that I have served a copy of the foregoing petition by depositing a copy of the same in the United States mail, properly stamped and addressed to each of the following:

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George W. McKeag, Esq.
123 South Broad Street
Philadelphia, Pennsylvania 19109

this 16th day of July, 1968.

JACKSON A. DYKMAN

.....

Jackson A. Dykman

APPENDIX 1

DIOCESE OF LONG ISLAND

[SEAL]

GARDEN CITY, LONG ISLAND
IN THE NAME OF GOD, AMEN

WE, being the corporation holding title to the realty of in the DIOCESE OF LONG ISLAND, and being, by the good PROVIDENCE OF GOD in possession of a House of Prayer, now free from all worldly debt, do hereby appropriate and devote the same to the Worship and Service of ALMIGHTY GOD, THE FATHER, THE SON, AND THE HOLY GHOST, according to the devout customs of the Protestant Episcopal Church, and the provisions of the Church in the United States of America, in its Ministry, Doctrines, Liturgy, Rites, and Usages, as set forth in the Book of Common Prayer; and for a Congregation in communion with said Church, in the Diocese of Long Island.

AND WE DO HEREBY REQUEST the Right Reverend JONATHAN GOODHUE SHERMAN, Bishop of Long Island, to take the said building under his spiritual Jurisdiction and authority, and that of his successors in office, and to consecrate the same by the name of
and thereby to separate it from all unhallowed, worldly, and common uses, and solemnly to dedicate it to the holy purposes above mentioned.

AND WE DO MOREOVER HEREBY RELINQUISH all claim to any right of disposing of the said building, without due consent given by the Ecclesiastical Authority of the Diocese, according to the Canons of the said Diocese, or allowing the use of it in any way inconsistent with the terms and true meaning of this INSTRUMENT OF DONATION, and with the Form of Consecration hereby requested of the Bishop.

IN TESTIMONY WHEREOF, we the said
; of
in the Diocese of Long Island, have caused this instrument of Donation to be prepared, and the signature of our
and Secretary to be affixed, (and the corporate seal of the said Church to be attached) at a meeting duly convened on day of
in the Year of Our Lord, One Thousand, Nine Hundred and

APPENDIX 2

DIOCESE OF LONG ISLAND

[SEAL]

GARDEN CITY, LONG ISLAND
IN THE NAME OF GOD, AMEN.

WHEREAS THE RECTOR, CHURCHWARDENS AND VESTRYMEN of , in the County of , and State of New York, have, by an instrument this day presented to me, appropriated and devoted a house of public worship erected by them in the said County of , State of New York to the worship and service of ALMIGHTY GOD, THE FATHER, THE SON, AND THE HOLY GHOST, according to the provisions of the Protestant Episcopal Church, in the United States of America, in its Ministry, Doctrines, Liturgy, Rites and Usages; and by a Congregation in Communion with said Church, and in union with the Convention thereof in the Diocese of Long Island.

AND WHEREAS the same RECTOR, CHURCHWARDENS AND VESTRYMEN have, by the same Instrument, requested me to take their said house of worship under my spiritual jurisdiction as the Bishop of the Diocese of Long Island, and that of my Successors in Office, and to consecrate it by the name of and thereby separate it from all unhallowed, worldly, and common uses, and solemnly dedicate it to the holy purposes above mentioned.

NOW THEREFORE, KNOW ALL MEN BY THESE PRESENTS, that I, JONATHAN GOODHUE SHERMAN by Divine permission the Bishop of the Diocese of Long Island, acting with the protection of Almighty God, have on this day of being in the year of our Lord one thousand nine hundred and

taken the above mentioned house of worship under my spiritual jurisdiction as Bishop aforesaid, and that of my Successors in Office, and, in presence of divers of the Clergy, and a public congregation therein assembled, and according to the form prescribed by the Protestant Episcopal Church in the United States of America, have consecrated the same by the name of

AND I DO HEREBY PRONOUNCE AND DECLARE, that the said is consecrated accordingly, and thereby separated henceforth from all unhallowed, worldly and common uses, and dedicated to the worship and service of ALMIGHTY GOD, THE FATHER, THE SON, AND THE HOLY GHOST, for reading and preaching HIS HOLY WORD, for celebrating HIS HOLY SACRAMENTS, for offering to His glorious Majesty the sacrifices of Prayer, Praise, and Thanksgiving for blessing His people in His Name, and for the performance of all other Holy Offices, agreeably to the terms of the Covenant of Grace and Salvation in our Lord and Saviour Jesus Christ, and according to the provisions of the Protestant Episcopal Church in the United States of America, in its Ministry, Doctrines, Liturgy, Rites and Usages.

IN TESTIMONY WHEREOF, I have hereunto affixed my Seal and Signature in Garden City, on the day and in the year above written, and in the year of my Consecration.

.....

Bishop of Long Island

APPENDIX 3

CANON 30 OF THE DIOCESE OF LONG ISLAND

Canon 30
of the Dissolution of the Pastoral Relation

Section I. A Rector may not resign his Parish, without the consent of the said Parish, of its Vestry, or its Trustees, whichever may be authorized to act in the premises, nor may any Rector or Minister canonically or lawfully elected and in charge of any Parish be removed therefrom by said Parish, Vestry, or Trustees, against his will, except as hereinafter provided.

Section II. If for any reason a Rector or Minister as aforesaid, or the Parish committed to his charge, or its Vestry or Trustees, shall desire a separation and dissolution of the pastoral relation the parties may agree respecting such separation and dissolution and the terms thereof, provided, however, that an agreement imposing upon such Parish or its Vestry or Trustees any obligation to support or contribute to the support of such Rector or Minister or to pay him any sum or sums of money shall not become effective unless and until the Ecclesiastical Authority, acting by and with the advice and consent of the Standing Committee, shall approve the terms and conditions thereof and such consent and approval shall have been indorsed on or annexed to such agreement and such agreement, with such consent and approval filed with the Secretary of the Standing Committee.

Section III. If for any urgent reason a Rector or Minister as aforesaid, or the Parish committed to his charge, its Vestry or Trustees, shall desire a separation and dissolution of the pastoral relation, and the parties be not agreed respecting such separation and dissolution, notice in writing may be given by either party to the Ecclesiasti-

cal Authority. The Bishop, in case the difference be not settled by his godly judgment, shall ask the advice and consent of the Standing Committee, and, proceeding with its aid and counsel, after a hearing before it, shall be the ultimate arbiter and judge. If there be no Bishop, the Ecclesiastical Authority shall select a Bishop of an adjacent Diocese to act as the Bishop, and with like force and effect. The judgment shall be either that the pastoral relation between the parties shall cease and determine at a time and upon terms therein specified, or that the said relation shall not be terminated; and such judgment shall be binding upon both parties. In the event of the failure or refusal of either party to comply with the terms of such judgment, the Bishop may (1) in the case of a Rector or Minister, suspend such Rector or Minister from the exercise of his priestly office until he shall comply with said judgment; (2) in the case of a Vestry or Trustees, recommend to Diocesan Convention that the union of the Parish with Convention shall cease until they have complied with his judgment.

Section IV. In case of the regular and canonical dissolution of the connection between a Rector or Minister and his Parish, under this Canon, the Ecclesiastical Authority shall direct the Secretary of Convention to record the same.

NOTE:

Canon 45 of General Convention which is in substantially the same language, provides:

Section 4. This Canon shall not apply in any Diocese or Missionary District which has made, or shall hereafter make, provision by Canon upon this subject, nor in contravention of any right of any Rector, Minister, Parish, Congregation, or Vestry under the law of the Civil Authority.

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In the

Supreme Court of the United States

OCTOBER TERM, 1968

No. 71

PRESBYTERIAN CHURCH IN THE UNITED STATES, ET AL.,
Petitioners,

VS.

MARY ELIZABETH BLUE HULL MEMORIAL PRESBYTERIAN CHURCH, ET AL.,
Respondents.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF GEORGIA

BRIEF OF PETITIONERS

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In the

Supreme Court of the United States

OCTOBER TERM, 1968

No. 71

PRESBYTERIAN CHURCH IN THE UNITED STATES, ET AL.,
Petitioners,

vs.

MARY ELIZABETH BLUE HULL MEMORIAL PRESBYTERIAN CHURCH, ET AL.,
Respondents.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF GEORGIA

BRIEF FOR THE PETITIONERS

CITATIONS TO OPINIONS BELOW

The opinion of the Supreme Court of Georgia and its opinion denying Petitioners' Motion for Rehearing (printed in the Appendix at pp. A. 115-36[1] and A. 152, respec-

[1]Page references preceded by "A." refer to pages of the Appendix filed in this Court along with this Brief.

tively), are reported in 224 Ga. 61, 159 S.E.2d 690 (1968). The judgments of the Supreme Court of Georgia affirming the judgments of the court below and the order denying Petitioners' Motion for Rehearing are printed at A. 136 and A. 153, respectively, and the judgments of the Superior Court of Chatham County, Georgia, are printed at A. 113 and A. 114.

JURISDICTION

The judgment of the Supreme Court of Georgia was dated and entered on January 18, 1968. Petitioners' Motion for Rehearing was denied on February 12, 1968. The petition for a writ of certiorari was filed in this Court on April 30, 1968, and was granted on June 10, 1968. The jurisdiction of this Court is invoked under 28 U.S.C.A. § 1257 (3)

QUESTION PRESENTED

Does the action by a civil court, sitting with a jury, in rendering a decision on purely ecclesiastical matters concerning the views of an hierarchical church on such matters as civil rights and civil disobedience, the qualification of women to hold church office, foreordination and the Vietnam War violate the freedom of religion clause (Amend. I) and the due process of law clause (Amend. XIV, § 1) of the United States Constitution when such decision results in the transfer of control of church property from the central church authority to the dissentient members of a local congregation who disagree with these views but who failed to seek any redress in the avenues established by the government of the church?[2]

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[2] The Respondent churches had a right to appeal from the findings of the Administrative Commission of the Savannah Presbytery appointed to investigate and act, but failed to take any appeal (A. 97).

CONSTITUTIONAL PROVISIONS

Provisions of the United States Constitution which Petitioners contend have been violated by the decisions and judgments of the Supreme Court of Georgia are the following:

Amendment I which provides in part:

> "Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof; . . ."

Section 1 of Amendment XIV which provides:

> "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of the citizens of the United States; nor shall any State deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

STATEMENT OF THE CASE

In 1966, Respondents Mary Elizabeth Blue Hull Memorial Presbyterian Church (Hull Memorial) and Eastern Heights Presbyterian Church (Eastern Heights), each a local church of the Presbyterian Church in the United States and each located in Savannah, Georgia, and within the Savannah Presbytery, became dissatisfied with various actions and pronouncements by the Presbyterian Church in the United States (sometimes called the Southern Presbyterian Church), one of the Petitioners in this case. More specifically Respondents were dissatisfied

with: 1) statements contained in church publications[3] and statements by the General Assembly[4] of the Presbyterian Church on civil disobedience as the final resort to secure to individuals their rights (A. 52-59); 2) the action of the General Assembly of the Church which amended its Constitution to make women eligible to hold church offices (A. 59-62); 3) the General Assembly's policy statement on the Vietnam War (A. 64-67); 4) the failure of the General Assembly to endorse a proposal to amend the Constitution of the United States to overcome a decision of this Court preventing Bible reading and prayer in public schools (A. 63-64); and 5) a statement of the General Assembly on foreordination (A. 63).[5]

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[3]Respondents did not use the Sunday School literature to which they objected but selected and used other literature as they were at liberty to do (A. 90).

[4]The General Assembly of the Presbyterian Church in the United States is its highest governing body. The government of the Church, in ascending order, consists of (1) the Church Session, composed of the Elders of the local church; (2) the Presbytery, composed of several churches in a geographical area; (3) the Synod, generally composed of all Presbyteries within a State; and (4) the General Assembly, the highest governing body (A. 85).

[5]Of the matters of which the Respondent churches complained, only one, the ordination of women, involved a change in the Constitution of the Church. This change was brought about in compliance with the Constitution of the Church (A. 60-62, 68, 84). All the other matters complained of—(1) the 1961 General Assembly declaration relative to foreordination; (2) the General Assembly action refusing to accept an overture relating to Bible reading and prayer; (3) the 1965 pronouncement on the Vietnam conflict; and (4) 1965 General Assembly pronouncement on civil disobedience—are all statements of points of view of the General Assembly not binding on the communicants in the church and do not constitute an abandonment of, departure from, or change in the faith and practices of the general church. The Georgia Supreme Court seemed to place great weight on statements in some Sunday School literature which had no authoritative weight in the denomination, and which the local churches were free to refuse to use and which Respondents did not use (A. 90).

The Respondents at no time used the regular procedures and discipline of the denomination to express their dissatisfaction (A. 85-86, 97). Instead, a majority of the members present at a meeting of the congregation of each of the Respondent Churches voted on April 17, 1966, to remove themselves from all ecclesiastical control, jurisdiction and oversight of the Presbyterian Church in the United States (A. 21-23; A. 29-30) and the pastors and ruling elders of the two churches renounced their respective offices in the central church. The central church authorities were then notified of this action and shortly thereafter, in accordance with the proper church procedure, an Administrative Commission was appointed by the Savannah Presbytery to consider and act upon the actions taken by the Respondent churches. After a thorough investigation, the Commission withdrew from the pastors and ruling elders of Respondents all authority to exercise office derived from the Presbyterian Church in the United States and assumed original jurisdiction over the two churches (A. 9-16; A. 31-32). No appeal was taken by either of the Respondents (A. 97).

Thereupon, these dissidents filed suit in the Superior Court of Chatham County, Georgia, seeking a permanent injunction against the Presbyterian Church in the United States and its duly constituted officers from interfering with their exclusive use and control of the local church property in Savannah, Georgia. The Superior Court submitted to a jury the question of whether the General Assembly's statements on civil rights, civil disobedience, the Vietnam War and the change in the Church Constitution which made women eligible to hold church office, constituted a substantial abandonment of the original tenets and doctrines of the Presbyterian Church in the United States and whether these actions were utterly variant from the

original purposes of that Church (A. 110-12). The jury found in favor of the local churches and thereupon the Superior Court entered its judgments (A. 113-14) which enjoined the Presbyterian Church in the United States and its authority from using the local church properties.

Petitioners appealed to the Supreme Court of Georgia and that court in an opinion (A. 115-36) affirmed the judgments of the lower court. Petitioners then filed a timely Motion for Rehearing (A. 137-52) which was denied in an additional opinion (A. 152). Petitioners then, on April 30, 1968 and within the time allowed, filed in this Court their petition for a writ of certiorari which this Court granted. This brief is now presented to this Court urging reversal of the decision by the Supreme Court of Georgia.

ARGUMENT

I.

The First and Fourteenth Amendments Forbid Civil Courts to Decide Purely Ecclesiastical Matters When Such Decisions Have the Effect of Transferring Control of Church Property from One Church Group to Another.

(a) The actions of the Respondent churches in severing all connections with the Presbyterian Church in the United States resulted in large measure from Respondents' disagreement with statements made by the General Assembly of the Presbyterian Church in the United States concerning civil rights and civil disobedience. These statements by the highest governing body of the Presbyterian Church were precipitated by the social changes which have occurred in the Southern states since 1954, and in fact

many churches with hierarchical governments have seen fit to express similar opinions concerning the propriety of civil disobedience when related to civil rights.

Shortly after the Respondents withdrew, the General Assembly of the Presbyterian Church made clear its position on civil disobedience when related to civil rights, saying in part:

> "The Presbyterian Church, U. S., desires at this time to reaffirm the obligation of all her obedient sons and daughters; To live responsibly under the law of the land; To use personal influence and ballot to enhance the rule of law so that injustice may be replaced with justice, and the full provisions of the law for justice, protection, and liberty may be enjoyed by every citizen of every community; To regard civil disobedience as a measure of last resort to be employed only in circumstances of otherwise irremediable need, and in the exercise of which the whole concept of law is not denied, but affirmed; and To continue to support and regard with compassion those who practice civil disobedience when no legal recourse has been left open to them and who act in Christian conscience and allegiance to Almighty God." (A. 58).[6]

It is clear that Respondents' disagreement with the parent Church's statements on civil disobedience such as quoted above, is one of the main reasons why Respondents withdrew and severed all connections with the Presbyterian Church in the United States. (R. 169-70[7] and R. 179-80).[8]

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[6]The Presbyterian Church's basic reasoning which preceded this quotation is set forth at pp. A. 56-58.

[7]Page references preceded by "R." refer to pages of the certified transcript of the record previously filed with the Court.

[8]Respondents contend that such statements by the Church constitute intermeddling with civil affairs which they argue

The Presbyterian Church is not the only Southern Church to have such difficulty. A similar situation developed in the Methodist Church in Alabama where a local church declared itself in disagreement with the existing social policies of the parent church and announced itself separate from the Methodist Church. The dissident congregation relied upon an Alabama statute[9] which authorized a local church to withdraw local property from the use and control of the parent church upon a vote of 65% of its members. The Federal courts held the Alabama statute to be unconstitutional upon the ground that it violated the freedom of religion clause of the First Amendment, and control of the church property was returned to the parent church.[10]

If the decision of the Supreme Court of Georgia is allowed to stand, it may well be followed by many state courts and encourage widespread withdrawal of church property from the discipline of the parent church simply because there may be disagreement concerning social policy, and especially the propriety of civil disobedience as related to civil rights. Nor is the problem confined to Presbyterian churches. All churches with hierarchical forms of government will be affected, including the Epis-

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violates the Westminster Confession of Faith (R. 162-63). It should be pointed out, however, that the Confession of Faith, at pp. 136-37 (R. 711) clearly states that (1) "by way of humble petition in cases extraordinary;" *or* (2) "by way of advice for satisfaction of conscience, if they be thereunto required by the civil magistrate", the Church councils can become involved in civil affairs. This is not to suggest that the Presbyterian Church has become so involved but merely to point out that under the Church Constitution, such action is not prohibited in all circumstances.

[9]Code of Alabama, Tit. 58, §§104-113 (Supp. 1967).

[10]*Northside Bible Church* v. *Goodson*, 387 F.2d 534 (5th Cir. 1967).

copal, Lutheran, Methodist, Roman Catholic and some Pentecostal denominations. If the decision is not reversed, all decisions of any church governing body will be subject to review and reversal by the civil courts. It will allow a local jury, which may disagree with the social policies of a particular church, to dictate to some extent the beliefs of that church with the fear that if the church speaks out on controversial issues, it will lose control over local church properties. Such a decision can only result in the destruction of hierarchical church government and should be reversed.

(b) In cases involving the right to the control of church property, the courts of this country have been virtually unanimous in abiding by the rule that civil courts will accept as conclusive the determinations made by the highest church authorities to which the question has been taken, and such a determination by the church judicatories is binding on the civil courts and they will be governed by such determination. This principle was firmly established by this Court in *Watson* v. *Jones*, 80 U.S. (13 Wall.) 679 (1871). In that case the membership of the Third or Walnut Street Presbyterian Church in Louisville, Kentucky, divided over the slavery issue. The General Assembly of the Presbyterian Church in the United States and a part of the local congregation supported the anti-slavery position. A strong minority of the congregation supported the slavery cause of the South. The Kentucky state court held in favor of the pro-slavery minority and awarded to them the possession of the church property even though the governing body of the Church, the General Assembly, had recognized the anti-slavery group as the group which should have possession of the local property. See *Watson* v. *Avery*, 65 Ky. (2 Bush.) 332 (1867). After this decision in the state court, several members of the

anti-slavery faction who lived in Indiana brought suit in the Federal court on diversity grounds. The lower Federal court held in favor of the anti-slavery group and awarded possession of the church property to that group. On appeal, this Court affirmed the decision of the lower court on the ground that the anti-slavery faction had been recognized by the highest authority of the Church, the General Assembly, as the true and lawful members of the Walnut Street Presbyterian Church and were thus entitled to possession of the local church property.

In a well-reasoned opinion by Mr. Justice Miller, this Court recognized that in cases involving hierarchical churches, the decisions of the civil courts in ecclesiastical matters should be governed by the decisions made by the church governing bodies. He stated the rule as follows:

> "In this class of cases, [involving hierarchical churches such as the Presbyterian Church] we think the rule of action which should govern the civil courts, founded in a broad and sound view of the relations of church and state under our system of laws, and supported by a preponderating weight of judicial authority is, that whenever the questions of discipline, or of faith, or eccesiastical rule, custom, or law have been decided by the highest of these church judicatories to which the matter has been carried, the legal tribunals must accept such decisions as final, and as binding on them, in their application to the case before them." (80 U.S. (13 Wall.) at 727).

The logic underlying this rule is stated at pp. 728 and 729 where the Court reasons:

> "The right to organize voluntary religious associations to assist in the expression and dissemination of any religious doctrine, and to create tribunals for the decision of controverted questions of faith within the association, and for the ecclesiastical

government of all the individual members, congregations, and officers within the general association, is unquestioned. *All who unite themselves to such a body do so with an implied consent to this government, and are bound to submit to it.* But it would be a vain consent and would lead to the total subversion of such religious bodies, if any one aggrieved by one of their decisions could appeal to the secular courts and have them reversed. It is of the essence of these religious unions, and of their right to establish tribunals for the decision of questions arising among themselves, that those decisions should be binding in all cases of ecclesiastical cognizance; subject only to such appeals as the organism itself provides for." (80 U.S. (13 Wall.) at 728) (Emphasis added).

* * *

". . . It is not to be supposed that judges of the civil courts can be as competent in the ecclesiastical law and religious faith of all these bodies as the ablest men in each are in reference to their own. It would therefore be an appeal from the more learned tribunal in the law which should decide the case to one which is less so." (80 U.S. (13 Wall.) at 729).

Watson v. *Jones* and the present case are virtually indistinguishable. In both, the division or schism occurred in large part as a result of differing views in racial matters; in both, the opposing groups were claiming possession of the local church properties; in both, the proper church authorities decided ecclesiastical matters[11] and the state

[11]In *Watson* v. *Jones*, the General Assembly decided which of two rival groups were the true and lawful representatives of the parent church. In the present case, the Administrative Commission appointed by the Presbytery of Savannah decided that there were no ministers or ruling elders duly qualified to possess the local church properties and hence the Presbytery was required to assume control (A. 15).

courts overruled the decision of the highest church judicatory to which the matters had been presented; and in both, the dissidents (those opposed to the parent church's views) contended that the parent church exceeded its authority in certain matters. Because of these similarities and because of the soundness of this Court's opinion in *Watson* v. *Jones*, the decision in the present case should be governed by the principles there stated and the holding by the Supreme Court of Georgia should be reversed.

It is obvious from a quick reading that *Watson* v. *Jones*, *supra*, was not decided on constitutional grounds. Nevertheless it conforms to the policy of separation of church and state which this Court has so zealously guarded through the years, and it is submitted that *Watson* was raised to constitutional status by this Court's decision in *Kedroff* v. *St. Nicholas Cathedral*, 344 U.S. 94 (1952). There the Court pointed out that *Watson* was decided without depending upon the constitutional prohibitions of interference with free exercise of religion and that it was decided prior to the time when the limitations of the First Amendment were held to be applicable to state action by virtue of the Fourteenth Amendment. But the Court went on to say of that decision:

> "The opinion radiates, however, a spirit of freedom for religious organizations, and independence from secular control or manipulation—in short, power to decide for themselves, free from state interference, matters of church government as well as those of faith and doctrine. Freedom to select the clergy, where no improper methods of choice are proven, we think, must now be said to have federal constitutional protection as a part of the free exercise of religion against state interference." (344 U.S. at 116).

But whether *Watson* v. *Jones* has been raised to constitutional status or not, there can be no question that the prin-

ciples of law, *i.e.*, "a spirit of freedom for religious organizations, and independence from secular control and manipulation", spelled out in *Watson* are still applicable today, and that decision by this Court stands as a broad cornerstone for the determination of church property disputes.

(c) In addition to the general principles of religious freedom espoused in *Watson* v. *Jones*, this Court has held in *Kedroff* v. *St. Nicholas Cathedral*, *supra*, and *Kreshik* v. *St. Nicholas Cathedral*, 363 U.S. 190 (1960), that the First and Fourteenth Amendments[12] to the United States Constitution guarantee that a state cannot, either through its legislative or judicial branches, prohibit the free exercise of religion by deciding purely ecclesiastical matters. Such matters are to be determined by the appropriate church judicatories and, once properly determined by the church, are binding and the state cannot overrule such decisions. Contrary, however, to those decisions, the holding of the Supreme Court of Georgia which Petitioners ask this Court to reverse allows civil courts to enter the ecclesiastical field and determine whether statements on social policy by the parent church would authorize dissidents to secede from the parent church and take with them control of local church properties.

In *Kedroff* this Court considered the constitutionality of a New York statute which undertook to transfer the control of Russian Orthodox churches in New York from the Patriarch in Moscow to the governing authority of the Russian Orthodox Church in America. The case first reached the courts when the American branch of the church brought suit in the New York state court to determine the right to the use and occupancy of St. Nicholas

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[12]This Court held in *Cantwell* v. *Connecticut*, 310 U.S. 296 (1940), that the freedom of religion clause of the First Amendment is applicable to the states by virtue of the Fourteenth Amendment.

Cathedral in New York City. More specifically, the New York court was called upon to determine whether appointment of Benjamin by the Patriarch of Moscow (the ruling head of the Russian Orthodox Church) or the election of Leonty by the convention of the American churches validly selected the ruling hierarch for the American churches. Relying on the New York statute, the New York Court of Appeals[13] ruled in favor of the American branch of the church, reasoning that the primary purpose of the New York law was to provide for an orderly method for the administration of church properties and to preserve them from exploitation by those who might divert them from the true beneficiaries of the trust. On appeal, this Court reversed on the ground that the New York statute violated the freedom of religion clause of the First Amendment, made applicable to states by the Fourteenth Amendment, because the law had the effect of transferring control of church property from one administrator to another.

> "By fiat [the statute] displaces one church administrator with another. It passes the control of matters strictly ecclesiastical from one church authority to another. It thus intrudes for the benefit of one segment of a church the power of the state into the forbidden area of religious freedom contrary to the principles of the First Amendment." (344 U.S. at 119).

And citing *Watson* v. *Jones, supra,* as authority, Mr. Justice Frankfurter in a concurring opinion joined by Mr. Justice Black and Mr. Justice Douglas stated:

> "The judiciary has heeded, naturally enough, the menace to a society like ours of attempting to settle such religious struggles by state action. And so,

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[13] *St. Nicholas Cathedral* v. *Kedroff*, 302 N.Y. 1, 96 N.E.2d 56 (1950).

> when courts are called upon to adjudicate disputes which, though generated by conflicts of faith, may fairly be isolated as controversies over property and therefore within the judicial competence, the authority of courts is in strict subordination to the ecclesiastical law of a particular church prior to a schism." (344 U.S. at 122).

Upon remand, the New York court then ordered a retrial on a common law issue allegedly left open by this Court's opinion in *Kedroff* on the question of the right of the American branch of the church to use and occupy the Cathedral. After trial the New York Court of Appeals directed the entry of judgment against the Patriarch in Moscow and in favor of the American branch of the church. The court's ruling was based on the assumption that because of the domination of the Moscow Patriarch by the secular authority in the U. S. S. R. (such domination found by the New York court to be the fact) the Patriarch's appointee could not under the common law of New York validly exercise the right to occupy the Cathedral.[14] This Court granted certiorari and again reversed, holding that the *Kreshik* decision "rested on the same premises which were found to have underlain the enactment of the statute struck down in *Kedroff*." (363 U.S. at 191). This Court held that it makes no difference whether the state acts through its legislature, as in *Kedroff*, or through its judiciary, as in *Kreshik*, because whether the action is legislative or judicial it was still the application of state power and subject to the restrictions of the First and Fourteenth Amendments.[15] Thus, the same principles applied in the *Kedroff*

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[14] *St. Nicholas Cathedral of R.O. Church* v. *Kreshik*, 7 N.Y.2d 191, 164 N.E.2d 687 (1959).

[15] The Court cited as authority *N.A.A.C.P.* v. *Alabama*, 357 U.S. 449, 463 (1958) and *Shelley* v. *Kraemer*, 334 U.S. 1, 14–16 (1948).

dispute forbid the state judiciary as well as its legislature from interfering with the free exercise of religion by attempting to transfer control of church property from one segment of the church to another; and the same principles should prohibit a state court sitting with a jury from deciding purely ecclesiastical matters.

The effect of the failure to apply the First Amendment to the situation presented by the record in the present case is to transfer control of local church properties from the Savannah Presbytery of the Presbyterian Church in the United States to the dissident members of the Respondent congregations who had failed to appeal the Church decision in the avenues established by the Church Constitution.

Equally applicable in the present case is the conclusion stated in *Kedroff*:

> "Ours is a government which by the 'law of its being' allows no statute [and by virtue of the *Kreshik* case, no judicial action], state or national, that prohibits the free exercise of religion. There are occasions when civil courts must draw lines between the responsibilities of church and state for the disposition or use of property. *Even in those cases when the property rights follow as an incident from decisions of the church custom or law on ecclesiastical issues, the church rule controls.* This under our Constitution necessarily follows in order that there may be free exercise of religion." (344 U.S. at 120-21) (Emphasis added).

To hold otherwise would allow the state to inject its power and authority into religion and thereby prevent the free exercise thereof.

(d) There are numerous state and lower federal court decisions which rely on the same principles and which reach the same result as this Court. Thus the Georgia de-

cision is not only in conflict with the decisions of this Court, but also with the decisions of other state and Federal courts.

In *Northside Bible Church* v. *Goodson*, 387 F.2d 534 (5th Cir., 1967), mentioned earlier, the Fifth Circuit Court of Appeals affirmed the decision of the District Court which declared unconstitutional as violative of the First and Fourteenth Amendments an Alabama statute which allowed 65% of a local congregation of an hierarchical or connectional church to withdraw local church property from the use and control of the parent church if the local group determined that a change in "social policies" had occurred within the parent. Circuit Judge Rives, speaking for the court stated:

> "State and federal courts alike are obliged to uphold the laws and rules of church governing bodies against dissident factions. Watson v. Jones, 1871, 80 U.S. (13 Wall.) 679, 20 L. Ed. 666. Judicial tribunals, as arms of the government, must avoid interference with established church policies and government." (387 F.2d at 537).

And in the case of *Barkley* v. *Hayes*, 208 F. 319 (W.D. Mo. 1913) *aff'd sub nom. Duvall* v. *Synod of Kansas*, 222 F. 669 (8th Cir. 1915), *aff'd sub nom. Shepard* v. *Barkley*, 247 U.S. 1 (1918), this Court on appeal reaffirmed the principles of *Watson* v. *Jones, supra* (247 U.S. at 2) and unanimously upheld a decision of the District Court which sustained the right of the Presbyterian Church in the United States of America and the Cumberland Presbyterian Church to merge.

There are numerous cases from the state appellate courts deciding church property disputes in accordance with the decisions made by the church tribunals. These cases are based upon the fundamental principles applied by this Court in *Watson* v. *Jones, supra*. The following de-

cisions by state appellate courts deal specifically with the Presbyterian denomination and for that reason are cited here.

Presbytery of Indianapolis v. *First United Presbyterian Church of Indianapolis*, Cause No. 667A14 (Ind. App., 2d Div., July 3, 1968);

St. John's Presbytery v. *Central Presbyterian Church of St. Petersburg*, 102 So. 2d 714 (Fla. 1958);

Bramlett v. *Young*, 229 S.C. 519, 93 S.E.2d 873 (1956);

Trustees of Pencader Presbyterian Church v. *Gibson*, 26 Del. Ch. 375, 22 A.2d 782 (1941);

Cumberland Presbyterian Church v. *North Red Bank Cumberland Presbyterian Church*, No. ——— (Tenn. App., East. Sec., May 15, 1968).

Each of these cases cited above upholds the principle that civil courts are governed by the decisions made by the highest church judicatories to which the matter has been taken. The following quote taken from *Bramlett* v. *Young*, *supra*, is representative of the holdings of other state appellate courts:

> "The civil courts will not enter into the consideration of church doctrine or church discipline, nor will they inquire into the regularity of the proceedings of the church judicatories having cognizance of such matters. To assume such jurisdiction would not only be an attempt by the civil courts to deal with matters of which they have no special knowledge, but it would be inconsistent with complete religious liberty, untrammeled by state authority." (93 S.E.2d at 882)

(e) Although the First and Fourteenth Amendments to our Constitution specifically prohibit the establishment of religion and interference with its free exercise, the

Georgia Supreme Court's decision does exactly that. The Georgia court held:

> "We take the view that such a trust [an implied trust upon the local church property for the benefit of the general church] is conditioned upon the general church's adherence to its tenets of faith and practice existing when the local church affiliated with it and that an abandonment of, or departure from, such tenets is a diversion from the trust which the civil courts will prevent." (224 Ga. at 68, 159 S.E.2d at 695) (A. 124).

This statement is the very heart of the opinion below and Petitioners contend that it is an obvious violation of their rights under the First and Fourteenth Amendments in that such a holding prohibits all hierarchical churches from ever changing any of its doctrines or beliefs.

Under the ruling of the Georgia court, all that is necessary in order for a seceding congregation to obtain the local property is for that congregation to prove to a local jury that the parent church no longer adheres to "its tenets of faith and practice existing when the local church affiliated with it." Such a rule not only destroys the effectiveness of hierarchical church governments by preventing the governing body from ever making a binding decision, but it also completely freezes the doctrines and beliefs of hierarchical churches so that no changes in faith or practice can ever be made, even though the original doctrine included provisions for change. The State of Georgia, through its judiciary, is saying: "The theology, discipline, and tenets of faith and practice of the Presbyterian Church in the United States and its local churches must always be those which existed in the Presbyterian Church when the first local church became affiliated with the parent church. Neither the General Assembly of the

Presbyterian Church in the United States nor Hull Memorial nor Eastern Heights nor any other local Presbyterian church may ever change the faith and practices of the Presbyterian Church in the United States." The result is that the State of Georgia has forced a particular religious doctrine and belief not only upon Respondents and the Presbyterian Church in the United States, but upon all local Presbyterian churches in Georgia which affiliated with it. The Georgia court's decision, if allowed to stand, effectively emasculates the form of government, and hence the tenets of faith, presently used by the Presbyterian Church and other hierarchical churches.

Not only does this rule result in the establishment of a religion by the State, it also deprives the individual church member of his right to the free exercise of religion. By joining a particular denomination, an individual expresses his belief in the form of government and practices utilized by that denomination and if the form of government of that denomination allows for change and amendment, he has the right to expect that some change could be effected if properly done. But under the rule established by the Supreme Court of Georgia, the church would not be allowed to utilize its form of government to change its tenets of faith and practice, and therefore the individual's belief in a particular form of church government and his right to freely exercise that belief are destroyed. The result is that no matter how much he might desire to belong to a church which could change its faith and practices, he could not because no church has that right, except at the peril of losing all control over its local church property. Moreover, since all hierarchical churches within the State are subject to this rule, he would not be able to withdraw from one denomination and join another which was free to utilize its form of government as it saw fit and in fact

he could not even organize a new church with a government which provided for change or amendment of the original beliefs.

(f) Aside from the fact that the Georgia decision establishes a religion and prohibits free exercise of religion, the reasoning and rule established by the Georgia court were specifically rejected by this Court in *Watson* v. *Jones*, *supra*. In *Watson*, Mr. Justice Miller pointed out that the doctrine of the English courts at that time was that control of church property lay with the parties which held to the "true standard of faith", *i.e.*, the original beliefs of the church, citing several English cases as authority.[16] This same doctrine is the basis of the Georgia decision. Mr. Justice Miller refused to accept the argument that the English doctrine should be applied to church property disputes in this country, pointing out that the church in England was not a "free church" in the sense in which the term is applied in the United States. Therefore, if the decision of the Georgia Supreme Court is allowed to stand, this Court will be accepting the strict English doctrine which it rejected almost 100 years ago.

II.

The Arguments Advanced by Respondents Have No Validity in the Present Case and Should Be Rejected.

(a) Respondents, in their briefs in response to the petition for a writ of certiorari, contend that where a local church and the governing body of the church are involved in a conflict over possession of the local church property, civil courts have the right and authority to determine

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[16] *Attorney-General* v. *Pearson*, 3 Merivale 353, 36 Eng. Rep. 135 (Ch. 1817) and *Craigdallie* v. *Aikman*, 2 Bligh 529, 3 Eng. Rep. 601 (H.L. 1813) (Scot.).

whether the governing body of the church has acted in accordance with its constitution and procedural rules. In this regard, Respondents contend that this Court's decision in *Watson* v. *Jones, supra,* has been modified or changed to the extent that if there is "fraud, collusion or arbitrariness" or some "revolutionary action" by the church governing bodies, then the decisions of these bodies will not be given effect. Such an argument has no validity in the present case for two reasons. First, the Presbyterian Church in the United States, acting through its duly constituted bodies such as the General Assembly and the Administrative Commission of the Presbytery of Savannah, at all times strictly adhered to its rules, both substantive and procedural. Amendments to the Book of Church Order and Confession of Faith and all resolutions adopted by the General Assembly were adopted in accordance with the proper procedures of the Presbyterian Church in the United States (A. 60-62, 84 and R. 190-91). Secondly, neither the jury nor the Superior Court of Chatham County, Georgia, nor the Supreme Court of Georgia made any finding of fact or conclusion of law that the Constitution of the Presbyterian Church in the United States or any rule or regulation was in any way violated or that any action by the Church was fraudulent, or arbitrary or effected by collusive means.

(b) Respondents have also argued that civil courts have the right to make decisions affecting the title and use of church property. They contend that because Petitioners themselves, by filing a cross-action in the trial court, invoked the help of civil courts, they waived the right to insist upon the exclusivity of jurisdiction of the ecclesiastical tribunals. Petitioners do not contend that civil courts cannot decide civil matters involving property. In doing so, however, these courts must accept the deci-

sions of the ecclesiastical tribunals as final and binding on church customs or laws on ecclesiastical issues.

With regard to the point that Petitioners filed a cross-action and thereby themselves invoked the rulings of civil courts, it need only be pointed out that in *Watson* v. *Jones*, *supra*, the action was first brought to the civil courts by those loyal to the parent church. Furthermore, Petitioners only sought to have the court uphold the decision of the Savannah Presbytery's Administrative Commission which was the highest judicatory within the Church to which the question had been presented and did not request any decision on ecclesiastical matters.

III.

The Result of the Decision of the Georgia Supreme Court Is to Destroy Hierarchical Church Government by Permitting Any Church Member Who Is Dissatisfied with a Decision of His Church's Ruling Body to Carry His Complaint to the Civil Courts.

The decision of the Georgia Supreme Court is a threat to the continued existence of hierarchical church governments. Its effect is that a church governing body can make no decision or pronouncement respecting its doctrines or beliefs without subjecting its decision to the scrutiny of the civil courts. Therefore any church member who feels that the governing body of his church has taken some action or made some announcement which constitutes a departure from the original tenets of the faith may carry his complaint to a court of law for a decision on purely ecclesiastical matters. And in Georgia and states with similar procedures a jury would be given the task of determining: (1) the original beliefs of a particular religious organization, (2) the present tenets of faith of that religion, and (3) by making a comparison between the two, whether the present beliefs constitute an abandonment of or departure from the

original tenets of faith and practice. Frequently it will be necessary to make such decisions when the question presented involves some action by the church governing body which may be currently unpopular in the community, such as expressions of opinion concerning the propriety of civil disobedience as related to civil rights as is involved here. The Constitutions of churches with central government were never intended to permit a jury of men and women either trained or untrained in religious matters to interpret the faith, doctrines and teachings of a particular church.[17] But most important and even more disturbing is the realization that the state, through its judiciary, is allowed, even forced, to participate in religious affairs and to make decisions which prefer one religious group over another. Our Federal Bill of Rights removes this jurisdiction from all civil courts in the land. As Mr. Justice Black, speaking for this Court in *Everson* v. *Board of Education*, 330 U.S. 1, 15-16 (1947) said:

> "The 'establishment of religion' clause of the First Amendment means at least this: Neither a state nor the Federal Government can set up a church. Neither can pass laws which aid one religion, aid all religions, or prefer one religion over another. . . . Neither a state nor the Federal Government can, openly or secretly, participate in the affairs of any religious organizations or groups and vice versa. In the words of Jefferson, the clause against establishment of religion by law was intended to erect 'a wall of separation between church and State.'"

If the reasoning of the Georgia Supreme Court is upheld, the doctrines, beliefs and tenets of faith and practice of all hierarchical churches will be frozen for all time to come. Churches will be effectively prevented from speaking out or taking a stand on contemporary moral issues

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[17]Members of the church involved would be disqualified to serve on the jury.

and from clarifying certain of their doctrines and from changing any beliefs or practices, even though voted upon and approved in accordance with the rules of the denomination. And if churches do speak out, dissatisfied members can take their complaints to the courts for a decision by a local jury. The facts in the instant case bear out this result. Here the governing body of the Presbyterian Church in the United States, in accordance with all procedural rules of the Church, amended its Constitution to allow women to hold church office, adopted certain resolutions involving civil rights and civil disobedience and refused to endorse a proposal to reverse by constitutional amendment a decision of this Court involving prayer and Bible reading in the public schools. Because of the Presbyterian Church's involvement in these matters, which were unpopular among the members of the Respondent churches, Respondents chose to sever all connections with the parent church and to withdraw the local property from the control of the Presbyterian Church in the United States. And when the Administrative Commission of the Savannah Presbytery, in accordance with the procedural rules of the Church, assumed original jurisdiction over the Respondent churches in order to prevent Respondents from diverting the local property, Respondents declined to appeal to a higher authority within the Church in the manner provided but instead took the matter to a court of law. If Respondents are sustained in their actions because of their disagreement with statements of points of view of the parent church, then a local church or even one member thereof who disagrees with some action or statement of the parent church can have the question submitted to the civil courts and to a jury. The authority in hierarchical churches would therefore be destroyed. Neither Respondents nor other disgruntled members of hierarchical churches should be allowed to defeat church government so easily and so

effectively. The words of this Court in *Watson* v. *Jones*, 80 U.S. (13 Wall.) 679, 729 (1871), are worthy of repetition:

> "All who unite themselves to such a body [an hierarchical church] do so with an implied consent to this government, and are bound to submit to it, but it would be a vain consent and would lead to the total subversion of such religious bodies, if any one aggrieved by one of their decisions could appeal to the secular courts and have them reversed. It is of the essence of these religious unions, and of their right to establish tribunals for the decision of questions arising among themselves, that those decisions should be binding in all cases of ecclesiastical cognizance, subject only to such appeals as the organism itself provides for."

CONCLUSION

Petitioners respectfully submit that the judgments of the Supreme Court of Georgia should be reversed.

Respectfully submitted,

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1968

No. 71

PRESBYTERIAN CHURCH IN THE UNITED STATES and J. LEHMON BRANTLEY, Chairman of the Administrative Commission of the Presbytery of Savannah,
Petitioners,

vs.

MARY ELIZABETH BLUE HULL MEMORIAL PRESBYTERIAN CHURCH,
Respondent,

AND

PRESBYTERIAN CHURCH IN THE UNITED STATES and J. LEHMON BRANTLEY, Chairman of the Administrative Commission of the Presbytery of Savannah,
Petitioners,

vs.

EASTERN HEIGHTS PRESBYTERIAN CHURCH and FRANK L. PERRY, SR., JOHN BRUNING, LESTER R. SARGENT, HARDIN C. NORMAN and ARMIN S. HUBERT, Trustees,
Respondents.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF GEORGIA

BRIEF OF RESPONDENT, MARY ELIZABETH BLUE HULL MEMORIAL PRESBYTERIAN CHURCH

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1968

No. 71

PRESBYTERIAN CHURCH IN THE UNITED STATES, ET AL.,

Petitioners,

vs.

MARY ELIZABETH BLUE HULL MEMORIAL PRESBYTERIAN CHURCH, ET AL.,

Respondents.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF GEORGIA

BRIEF OF RESPONDENTS

JURISDICTION

We respectfully submit that this Honorable Court does not have jurisdiction under 28 U.S.C.A. 1257 (3) in this matter.

QUESTIONS PRESENTED

Respondent respectfully submits that the following are the correct questions presented:

1. Jurisdiction of this Court.

2. Can civil courts settle property rights in a church dispute.

3. Can denomination require local church to use its property for propagation of doctrines in conflict with the fundamental teachings of the denomination as accepted at the time the local congregation united with denomination.

STATEMENT OF THE CASE

Mary Elizabeth Blue Hull Memorial Presbyterian Church was organized in 1868 by the Independent Presbyterian Church of Savannah, Georgia, a congregational church of the Presbyterian faith. Mary Elizabeth Blue Hull Memorial Presbyterian Church in 1890 affiliated with The Presbyterian Church in the United States, the Petitioners herein. The Presbyterian Church in the United States and Hull Memorial were in full accord and agreement at the time of affiliation on matters of doctrine, tenets and beliefs. On April 17, 1966 at a congregational meeting called well in advance, with proper notice to all members, and for the express purpose of deciding whether or not to withdraw from the Savannah Presbytery and The Presbyterian Church in the United States, after democratic discussion the membership voted overwhelmingly to withdraw, constitute themselves an independent Presbyterian church and to practice, teach and enjoy the true Presbyterian religion as practiced at the time they affiliated with The Presbyterian Church in the United States in 1890 and as taught and practiced by their forefathers.

This Respondent charged that the General Assembly of The Presbyterian Church in the United States had made radical departures from that faith since the time of Hull Memorial's affiliation in 1890 in:

1. Teaching and endorsing civil disobedience.

2. Ordaining women as preachers and ruling elders.

3. Making pronouncements and recommendations which concern civil, economic, social and political matters.

4. Giving support to the removal of Bible reading and prayer in the public schools.

5. Making declarations which would have the effect of assuming ownership of local church property.

6. Printing official publications which teach doctrines fundamentally divergent to the Presbyterian faith.

7. Invalidating and replacing parts of the Confession of Faith which the Presbyterian Church in the United States was bound to uphold.

8. Participating as an agency member of the National Council of Churches of Christ In the United States of America and giving backing to actions of said council in the area of sex, race and world affairs which are radical departures from the faith and practice of the Presbyterian faith as it existed at the time of the affiliation of Hull Memorial.

This Respondent contended that The Presbyterian Church in the United States had so substantially deviated from the faith that it was impossible to retain its affiliation and at the same time adhere to the original doctrines, tenets and beliefs.

After the withdrawal and after Hull Memorial's right of appeal and representation in the Councils of The Presbyterian Church in the United States no longer existed, the Savannah Presbytery of The Presbyterian Church in the United States notified the congregation and ruling elders of Hull Memorial that they were claiming ownership of the Hull Memorial property and threatened to physically take over the property if the congregation did not voluntarily surrender it.

In order to avoid the physical eviction and for the purpose of settling property rights Hull Memorial filed an injunction in the Superior Court of Chatham County, Georgia seeking to enjoin a threatened expulsion from their property. Appellants thereupon filed a cross action asking the Court to declare them the owners of the real property in question.

The case proceeded to trial before a jury on the issue of substantial departure from the faith, with no federal or Constitutional question being raised by either party. The case terminated in a jury verdict in favor of the local congregation. Appellants appealed the decision to the Georgia Supreme Court on the grounds that the trial court did improperly charge the jury on the issue of the degree of deviation necessary before the civil court acquired jurisdiction and that the Respondents had not exhausted their appeals to the General Assembly before seeking an injunction. This appeal was not based on any federal question. The Georgia Supreme Court sustained the rulings of the trial court and Appellants filed a motion for a rehearing and for the first time raised the federal question and claimed that their right to the Constitutional guarantee of freedom of religion had been violated. Their motion was denied and a petition for certiorari was filed in this Honorable Court.

I

Petition for Writ of Certiorari Should Have Been Denied Federal Question Not Being Properly Raised

This Court in construing statutes giving it power to review certain final decisions of the highest state courts, has held consistently that the federal question necessary for its appellate jurisdiction must have been raised and presented in the highest state court for decision, and that, unless it could not have been raised earlier, it is not raised and presented for decision below when it is suggested for the first time in a motion for rehearing which is denied by the state court without opinion. *American Surety Company* v. *Vevian F. Baldwin et al.*, 287 U.S. 156, 77 L. Ed. 231; *Susquehanna Boom Co.* v. *West Branch Boom Co.*, 1884, 110 U.S. 57, 3 S. Ct. 438, 28 L. Ed. 69; *Loeber* v. *Schroeder*, 1893, 149 U.S. 580, 585, 13 S. Ct. 934, 37 L. Ed. 856; *McMillen* v. *Ferrum Mining Co.*, 1905, 197 U.S. 343, 347, 25 S. Ct. 533, 49 L. Ed. 784; *Godchaux Co.* v. *Estopinal*, 1919, 251 U.S. 179, 181, 40 S. Ct. 116, 64 L. Ed. 213; *Citizens National Bank of Cincinnati* v. *Durr*, 1921, 257 U.S. 99, 106, 42 S. Ct. 15, 66 L. Ed. 149; *Rocker* v. *Fidelity Trust Co.*, 1923, 261 U.S. 114, 117, 43 S. Ct. 288, 67 L. Ed. 556, and the cases cited therein; *Herndon* v. *State of Georgia*, 1935, 295 U.S. 441, 79 L. Ed. 1530.

The Supreme Court of the United States acts upon the case as made to the Court below when judgment was rendered and cannot incorporate into the record new matter appearing on a petition for rehearing. *Simmerman* v. *Nebraska*, 1885, 116 U.S. 54, 6 S. Ct. 333, 29 L. Ed. 535.

Whether a federal question is properly raised in the trial court of the State is a question of State practice, *Chicago, Indianapolis & Louisville Railway Company* v. *Patrick McGuire et al.*, 49 L. Ed. 413, and an attempt to raise a federal question before a State Supreme Court up-

on a petition for rehearing after judgment, is too late, unless that Court entertains the question and decides it. *Herndon* v. *State of Georgia*, 1935, 295 U.S. 441, 79 L. Ed. 1530.

The Constitution of the State of Georgia provides in Section 2-3704 of the Code of Georgia Annotated that the Supreme Court of Georgia has no original jurisdiction but shall be a Court alone for the trial and correction of errors of law.

Under repeated rulings of the Supreme Court of Georgia the Court has held that it will not entertain a Constitutional question unless the question had been raised in the trial court and a ruling made thereon. In the case of *Herndon* v. *The State of Georgia*, 179 Ga. 597, the Supreme Court of Georgia stated on page 601:

> " 'Where it is sought to invoke a ruling by the Supreme Court on a constitutional question, the question must have been raised in the trial court and a ruling made thereon and the case brought to the Supreme Court for review.' In *Dunaway* v. *Gore*, 164 Ga. 219, 230 (138 S.E. 213), the following statement was made: 'Indeed it may be said that under the provision of our constitution, art. 6, sec. 2, par. 5 (Code, § 6502),[1] which provides that the Supreme Court 'shall be a court alone for the correction of errors,' this court would in no event have jurisdiction to consider the merits of any question which is either intentionally or unintentionally omitted in the trial court. . . .' "

This Honorable Court held in *Herndon* v. *State of Georgia*, 295 U.S. 441, and on rehearing 296 U.S. 661, that generally an attempt on a petition for rehearing to raise the federal question after judgment in the Supreme Court of the State comes too late unless the Court agrees to en-

1. Code § 6502 was a 1910 Georgia Code and is now § 2-3704 of the Georgia Code.

tertain and decides the question or unless the Court's ruling could not have been anticipated and petition for rehearing provides the first opportunity to raise the federal question.

There is no question in this case but that the Constitutional question was never raised in the trial court nor was any effort made to raise it nor was any federal question raised in the appeal to the Supreme Court of Georgia, but was first raised upon the motion for rehearing in the Supreme Court of Georgia (A. 139),[2] at which time the petitioners maintained that the relief sought by the plaintiffs in the Court below would controvert the First and Fourteenth Amendments to the Constitution of the United States. The motion for rehearing was denied by the Supreme Court of Georgia which did not rule on the Constitutional question. (A. 152).

There was no reason why the Constitutional or federal question could not have been raised in the trial court.

While the Petitioners contend that the Supreme Court of Georgia reversed long standing case law in overruling *Mack* v. *Kime*, 129 Ga. 1, thus denying Petitioners equal protection of the law and violated the separation of Church and State, all in complete disregard of the said First and Fourteenth Amendments to the Constitution of the United States and the decisions of this Court.

The Supreme Court of Georgia in its decision on the case now considered by this Court states (A. 125), as to *Mack* v. *Kime*, 129 Ga. 1:

> "The *Mack* case, in discussing the degree of abandonment or departure necessary to obtain protection, uses terminology such as 'complete abandonment,' 'purposes utterly foreign,' 'entirely abandon,' 'utterly abandon,' and 'abandon altogether.' We disagree. We

2. Page references preceded by "A" refer to pages of the Appendix.

do not believe that 'complete' or like degree of abandonment or departure is necessary for relief. To the extent that *Mack* v. *Kime*, 129 Ga. 1, supra, requires such standard, it is expressly overruled."

We respectfully submit that the only point overruled by the Supreme Court of Georgia in the *Mack* v. *Kime*, 129 Ga. 1, case was the degree of abandonment or departure necessary for relief and this was only an interpretation by the Court of its previous ruling; at most a modification as to the degree of abandonment. This was also the ruling of the trial court, and in fact the trial Judge had charged the jury as to substantial abandonment. (A. 111). The Appellants did not raise the Constitutional point in the trial court in an objection to the charge nor did they raise the point in their enumeration of errors to the Supreme Court of Georgia.

Appellants cannot plead ignorance of the laws of Georgia and the general rule as stated in *Mack* v. *Kime*, 129 Ga. 1 (2) (58 S.E. 184, L.R.A. (N.S.) 675), which held:

"The general rule is that where property rights are involved, the civil courts will interfere to protect the members of an ecclesiastical organization who adhere to the tenets and doctrines which the organization was organized to promulgate, and protect them in the right to use the property, as against those members of the organization who are attempting to divert the same to purposes utterly foreign. . ." See also *Tucker* v. *Paulk*, 148 Ga. 228 (3) (96 S.E. 339), where this court approved the trial court's finding on whether the plaintiffs had 'departed from the organization and doctrine of the church.' "

The civil courts of Georgia have always ruled that when property rights are involved civil courts will protect them against wrongful diversion.

The Supreme Court of Georgia said in *Dowdell et al.* v. *Cherry et al., trustees,* 209 Ga. 849:

> "While courts are reluctant to interfere in questions affecting the internal affairs of a religious organization, nevertheless, where property has been conveyed in trust for the use and benefit of a church, a court of equity will assume jurisdiction for the purpose of preventing a diversion of the trust."

and in *Chatfield* v. *Dennington et al.,* 206 Ga. 762, the Supreme Court of Georgia said:

> "3. While courts are reluctant to interpose in questions affecting the management of the temporalities of a church where property is devoted to a specific doctrine or purpose, the Courts will prevent it from being diverted from the trust."

The law of Georgia stated in Section 22-408 of the 1933 Code of Georgia Annotated:

> "Courts are reluctant to interpose in questions affecting the management of the temporalities of the church; but when property is devoted to a specific doctrine or purpose, the courts will prevent it from being diverted from the trust."

The Petitioners were therefore bound to anticipate that the Supreme Court of Georgia would follow its previous decisions and assume jurisdiction where property is involved for the purpose of preventing a diversion of the trust and in fact in the trial court Petitioners had filed pleadings (A. 21), asking for affirmative relief, thus seeking a ruling which they contended on their motion for rehearing in the Supreme Court of Georgia would violate the Constitution of the United States. It follows that their contention that they raised the federal question at the first opportunity is without substance and the certiorari should be dismissed.

II

Civil Courts Can Settle Property Rights in a Dispute Between Church Groups

Appellants contend that civil courts have no jurisdiction to settle property rights in any church case regardless of whether there has been a substantial deviation from its tenets and doctrines by one of the parties since the action would violate the exercise and establishment of religion clauses of the First Amendment and the due process clause of the Fourteenth Amendment to the United States Constitution.

It is true that civil courts will not enter into disputes between church groups where *only* matters of religion are concerned. It has been long established however that civil courts do have jurisdiction in such matters where civil rights or property rights are involved. While civil courts do not have jurisdiction of ecclesiastical matters, church courts likewise have no power to settle the question of title to real property. The proposition that civil courts jurisdiction can be properly invoked in church disputes where property rights are involved is well established. Appellants themselves recognized this rule in their original argument to the Supreme Court of Georgia where jurisdiction was not questioned and jurisdiction was actually invoked by them in their cross bill praying that they be declared the owners of the real property. The position taken by the Appellants at that time was not jurisdiction but that Georgia laws required total deviation rather than substantial deviation from the faith as charged by the trial Judge. They cited *Mack* v. *Kime*, 129 Ga. 1 (58 S.E. 184), as their authority for this proposition. This case that they so strongly relied upon stated the long established Georgia rule that civil courts do have jurisdiction in such matters where property is involved.

Recognition of civil court jurisdiction in such matters is by no means confined to the State of Georgia. The California Supreme Court stated that State's ruling as follows:

> "Lack of jurisdiction by civil courts in church disputes is always qualified by the rule that civil and property rights will be adjudicated by the civil court." *Queen* v. *Board of Directors of Rosicrucian Fellowship*, 342 P. 2d 424.

Some of the other jurisdictions where a similar rule prevails are as follows:

Church of the Nazarene v. *Church of the Nazarene*, Louisiana, 132 So. 2d 667.

Stansberry v. *McCarty*, Indiana, 149 N.W. 2d 683.

Holiman v. *Dovers*, Arkansas, 336 S.W. 2d 197.

In the *Holiman* case the Supreme Court of Arkansas in an appendix listed twenty-seven jurisdictions; twenty-six of which held that civil courts have jurisdiction to settle property rights. The Supreme Court of the United States denied certiorari in a similar dispute where the Kansas Supreme Court took jurisdiction to settle property rights. *Whipple* v. *Fehsenfeld*, Kansas, 346 U.S. 813, 249 P. 2d 638.

Appellants urge you to upset the rulings in a majority of the jurisdictions and to hold that there can be no jurisdiction by civil courts in any church dispute. They contend that this court has in fact so ruled in the cases of *Kedroff* v. *St. Nicholas Cathedral*, 344 U.S. 94 (1952) and *Kreshik* v. *St. Nicholas Cathedral*, 363 U.S. 190 (1960). These cases are easily distinguishable from the present case and do not prevent the State courts from settling property rights in proper cases.

The property in the *St. Nicholas* cases was furnished partly by the mother church and partly by the local congregation; whereas, in the Hull case no property, money or financial aid of any kind was ever extended to the local congregation by Appellants either in the acquisition or maintaining of the property. Secondly there was an obvious attempt by the New York Legislature and later by the New York Courts in the *St. Nicholas* cases to assist the local group in obtaining control of the property. This was a violation of the neutral status required by the freedom of religion clause of the United States Constitution. There was an obvious attempt to circumvent the relationship of the local congregation and the mother church and was clearly in violation of the freedom of religion clause of the Constitution. Thirdly there was no issue of deviation or departure from the original doctrines, tenets and beliefs of the Church as was established in the Hull Memorial case; and fourthly there had been no historical precedent established as to ownership of property as was established by the evidence in the Hull Memorial case. Neither the Georgia legislature nor the Georgia Courts have attempted to change any rule in the middle of the game. The Georgia Supreme Court has simply interpreted its law as it has the right to do under the doctrine laid down in *Erie Railroad Company* v. *Tompkins*, 304 U.S. 64. It has settled property rights in accordance with rulings previously laid down in *Mack* v. *Kime*, 129 Ga. 1; *Chatfield* v. *Dennington*, 206 Ga. 762; *Dowdell* v. *Cherry*, 209 Ga. 849; *Tucker* v. *Paulk*, 148 Ga. 228; and *Stewart* v. *Jarrell*, 206 Ga. 855.

Civil jurisdiction in proper cases is not confined to congregational type churches. See *Davis* v. *Scher*, 97 N.W. 2d 137. This case involved a Jewish Synagogue and concerned mixed seating. See also *Geiss* v. *Trinity Lutheran Church Congregation*, 230 N.W. 658.

The California Courts have rejected the theory that the *St. Nicholas* cases took away all State rights to settle property questions:

> "Being mindful of the view that religious associations should be afforded certain prerogatives of sovereignty (*Kedroff* v. *St. Nicholas Cathedral*, 344 U.S. 94; *Kreshik* v. *St. Nicholas Cathedral*, 363 U.S. 190) yet the State does have an interest in affording the disputants some Judicial recourse for resolving their arguments. Although we express reluctance to become embroiled in such controversy, we recognize the Judicial power to determine and protect property rights." *Mt. Zion Baptist Church et al.* v. *Second Baptist Church of Reno*, 432 P. 2d 328 (1967).

III

Appeal to a Higher Church Court Is Not Necessary Where the Higher Church Tribunal Is a Party to the Action

The highest Church Tribunal in The Presbyterian Church in the United States is a party to this action. The Presbyterian Church in the United States complains to the Court that Petitioner should be declared the owner of the real property in question on the grounds that no appeal was made to its General Assembly. Petitioner takes the position that it is the proper Tribunal to settle ownership of the property in question and that Respondents are not entitled to civil court relief, since no appeal was made of the action taken by its Savannah Presbytery. At this time it must be remembered that Respondents had no right of appeal since they had already withdrawn from The Presbyterian Church in the United States. The Savannah Presbytery prompted the civil court action by demanding possession of Respondents' property. Both the Presbytery and The Presbyterian Church in the United States have claimed ownership through its resolutions concerning the

congregation and through its pleadings. Can it now be said that there were effective remedies within the church judicatory? Any appeal would have been a lesson in futility.

There is no doubt that Church controversies involving factions and individuals where the General Assembly is not a party, such as ex-communication and expulsions of members and ministers, and the controversies involving different factions of one congregation, must be decided within the church itself.

The present dispute is between the congregation of Hull and the highest church Tribunal. It is not between two factions of the Hull congregation. Being a controversy over ownership of property between the congregation of Hull and The Presbyterian Church in the United States, there is no impartial tribunal within the church to hear an appeal.

Under the facts in this case, Respondents were not required to make a useless appeal.

IV

The Historical Customs and Usages of The Presbyterian Church in the United States Regarding Ownership of Real Property Cannot Be Disregarded

The Presbyterian Church in the United States in 1890 had an established policy and had taken a definite and positive position of nonownership of local church property where no express trust existed in their favor and where they had no monetary interest in such property. Dr. Aiken Taylor, Editor of "The Presbyterian Journal", an ordained minister in The Presbyterian Church in the United States, with a PHD from Duke University in the field of church history and who specialized in the field of church

history and the operation of church courts and a representative of the General Assembly to the North American Alliance of the World Presbyterian Alliance, was offered as an expert witness by Respondents and fully outlined the historical background of the customs and usages of The Presbyterian Church in the United States concerning ownership of local church property. (A. 68-83). He testified that the only provision where a Presbytery can take over the property of a local congregation was in Section 6-3 of the Book of Church Order, and that provision provided that if a Church is dissolved by the Presbytery or otherwise ceases to exist, and no disposition has been made of its property, the property shall go to the Presbytery. (A. 77). Hull Memorial Presbyterian Church did not cease to exist nor was it dissolved by the Presbytery but withdrew from the Presbytery as a unit. It is interesting to note here that no member of Hull has ever joined the Presbytery in this suit. He testified positively that it was an established policy that through long established customs and usages, The Presbyterian Church in the United States had a well established position that local church properties were the property of the local congregations. It is worthy of noting that the expert witness offered by Respondents did not deny the position taken by Dr. Taylor.

Respondents relied on this policy and had a right to do so since it was an established custom and usage of The Presbyterian Church in the United States and it had a right to expect that this position would not change without an opportunity by the local churches to withdraw their property from any future attempted domination or control by the General Assembly.

The rule on the binding effect of customs and usages of the church is stated in Corpus Juris Secundum,

> "Where property rights are involved, ecclesiastical questions are to be determined in accordance with the laws, customs and usages of the Church involved." 76 C.J.S., Section 86, Religious Societies.

Unlike other Churches with hierarchical forms of government the Constitution of The Presbyterian Church in the United States has no provisions placing ownership of local church property in the higher church, A resolution is now before the General Assembly attempting to add such a provision to its Constitution.

However, at the time of Hull's withdrawal the Petitioners and Respondent would have been bound by the laws, customs and usages of the church then in force.

V

Substantial Deviations from the Faith from the Fundamental Teachings of the Denomination by the National Church Justifies Withdrawal by a Local Congregation

We respectfully submit that the Respondent would be entitled to keep its property because of Petitioner's deviations from the Presbyterian faith as practiced in 1890, the time of affiliation of Respondents with Petitioners.

All the parties hereto agree that the basis for the Presbyterian faith in 1890 and today are the Holy Bible, Old and New Testaments, the Westminster Confession of Faith, the Book of Church Order and the Larger and Shorter Catechisms.

While there were eight reasons listed in Respondent's petition for Hull's withdrawal from The Presbyterian Church in the United States, all of which Respondent con-

tends are important, we agree with Petitioners as stated on page 7 of their brief that Respondent's disagreement with the parent church's statements on civil disobedience is one of the main reasons why Respondents withdrew and severed all connections with The Presbyterian Church in the United States.

Presbyterians have learned from history that interference in civil affairs and church sponsored disobedience to civil laws eventually will bring reprisals from the State. The Council of Divines realized that in 1648 when the Constitution was prepared prohibiting such intereference. The Westminster Confession of Faith Chapter XXV, Section 4. (R. 7111).[2]

> "It is the duty of the people to pray for magistrates, to honor their persons, to pay them tribute and other dues, to obey their lawful commands, and to be subject to their authority, for conscience sake. Infidelity, or difference in religion, doth not make void the magistrate's just and legal authority, nor free the people from their due obedience to him, from which ecclesiastical persons are not exempted, much less hath the Pope any power or jurisdiction over them in their dominions, or over any of their lives if he shall judge them to be heretics, or upon any other pretense whatsoever."

This proposition, more than anything else, has protected Presbyterians from actions by the State for generations. Separation of Church and State is not unilateral. The church is just as obligated to refrain from interfering in civil matters as government is so enjoined from interfering in church matters. Disregarding the above, the Petitioner's General Assembly made pronouncements approving civil disobedience for its members (A. 55), and made

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2. Page references preceded by "R" refer to pages of the certified transcript of the record previously filed with the Court.

public declarations condemning the foreign policy of this country. (A. 108).

The Petitioners by encouraging civil disobedience violated one of the basic tenets of the Presbyterian faith. The pronouncements, edicts and ideas issued by the General Assembly were announced in the news media, were incorporated in the Sunday School lessons, and issued in bulletins.

The highest body of the Church cannot depart from the original doctrines and tenets of the church and force a local congregation to remain within the church or lose its property.

> "No denomination, however can exercise its share of control over a local congregation so as to require the property of the latter to be used for propagation of doctrines in conflict with the fundamental teachings of the denomination as accepted at the time the local congregation united with the denomination." 76 C.J.S. 849.

It comes as a shock that the Petitioners would argue in their brief that if the decision of the Supreme Court of Georgia is allowed to stand that it may bring into question the propriety of civil disobedience.

That the teaching of civil disobedience is a fundamental and substantial deviation from the Presbyterian faith as it was known in the Southern Presbyterian Church in 1890 cannot be questioned. Throughout the long history of the Presbyterian denomination the various Presbyterian Churches in this country, Southern, Northern, Independent and other groups of the Church have strictly adhered to the doctrine of compliance with the civil authorities never seeking civil redress except through the ballot box or by humble petition to any imagined or real injustices in the law.

While petitioners in their brief have restricted the question of the propriety of civil disobedience as related to civil rights and apparently would also limit it for some reason to the Southern States, we cannot see the importance of this geographical limitation.

This is not an integration problem or a "Southern" problem as Appellants have attempted to portray it. There is no evidence in the record concerning integration. Certainly the concern of the Northern Presbyterian Church, which has little Southern affiliation, is not over integration. The injection of this matter in Appellants' brief, in the absence of any evidence to support it, can only be designed to influence and prejudice the minds of the members of this Court.

Disregarding its Constitution, The Presbyterian Church in the United States had injected itself into this Country's foreign policy and has condoned and encouraged disobedience to civil law by its members. The right of an individual to disobey the civil law and suffer the consequences if he so desires is not an issue here. This is the individual's right if he wishes to suffer the consequences. However, it is not the right of The Presbyterian Church in the United States, under its Constitution, to prompt such action or to condone disobedience to civil authority.

We respectfully maintain that when The Southern Presbyterian Church abandoned these Sections of the Confession of Faith by passing the resolution on civil disobedience the Hull Memorial Presbyterian Church had a perfect right to withdraw from its voluntary association entered into in 1890 and in fact had to withdraw to maintain their faith.

The Church Constitution compels obedience to civil law, and there has been no amendment to this provision.

Evidence was presented in the trial court that Sunday School literature was distributed to them expressing views contrary to Presbyterian belief as held by Respondent. This was not disputed by Appellants, who now argue that the local church is not compelled to use these materials as they are not compelled to disobey civil laws. This argument is extremely vulnerable. The leadership of the church when speaking for the church must express views in conformity with its Constitution. Sunday School superintendents and teachers have a right to expect official material to reflect views of the Church as outlined by its Constitution, and should not be compelled to censor *official* Sunday School material. To preach doctrines contrary to the church belief is heresy, and to qualify it by saying you do not have to believe does not change it from such designation.

The cost of operating the National Church, including the preparation and publication of its literature is borne by the local churches including the Respondent. In diverting the monies and energies contributed by Hull Memorial Presbyterian Church and its members to causes in direct conflict with the basic beliefs of the Presbyterian faith as it existed in 1890 and in direct conflict with the Presbyterian faith as understood and practiced by members, officers and clergy of the Hull Memorial Presbyterian Church, the General Assembly required Hull to use its property for the propagation of doctrines in conflict with the fundamental teachings of the denomination.

There is little doubt that there is a strong movement within The Presbyterian Church in the United States to "modernize" the thinking of its members. This is evidenced by its Sunday School literature complained of by Respondent, its continued affiliation with the National Council of

Churches, who engage in political activities, its condoning the violation of the civil law, and the ordaining of women ministers. There are pressures afoot to eliminate doctrines peculiar to the Presbyterian faith so that eventually all protestant churches can merge into one body. The relative merits or demerits of such action is not an issue in this dispute. What is at issue is whether the National Church can revolutionize its beliefs and force individual congregations to accept such moves and use their property to advance such beliefs in the absence of lawful amendments to its Constitution. Where The Presbyterian Church in the United States can amend its Constitution it has done so, where it could not be done the amendatory process was ignored and ultra vires actions were taken by the General Assembly without regard to the beliefs of the membership of the local churches. It is these actions Respondent complains of. The local church was caught up in the revolutionary changes and its efforts to remain true to the original doctrine and beliefs of the church as practiced in 1890 was to no avail.

The deviations complained of were a substantial and radical departure from the Presbyterian faith and compelled Respondent's withdrawal.

CONCLUSION

Wherefore, the Federal question not having been raised properly, this court should not review the judgment below.

There being no violation of freedom of religion clause of the United States Constitution the judgment of the Supreme Court of Georgia should be allowed to stand.

Respectfully submitted,

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CERTIFICATE OF SERVICE

This is to certify that we have this day served Mr. Robert B. Troutman and Mr. Charles L. Gowen, 434 Trust Company of Georgia Building, Atlanta, Georgia 30303 and Mr. Frank S. Cheatham, Jr., 32 East Bay Street, Savannah, Georgia 31401, attorneys for the Petitioners, in the foregoing matter with a copy of this brief by depositing in the United States mail a copy of the same in a properly addressed envelope with adequate air-mail postage thereon.

This 16th day of September, 1968.

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In the

Supreme Court of the United States

OCTOBER TERM, 1968

No. 71

PRESBYTERIAN CHURCH IN THE UNITED STATES, ET AL.,
Petitioners.

VS.

MARY ELIZABETH BLUE HULL MEMORIAL PRESBYTERIAN CHURCH,
Respondent,

VS.

EASTERN HEIGHTS PRESBYTERIAN CHURCH, ET AL.,
Respondents.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF GEORGIA

BRIEF OF RESPONDENTS

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Respondents.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF GEORGIA

BRIEF OF RESPONDENTS

STATEMENT OF THE CASE

On April 17, 1966, the congregation of the Respondent Church by a unanimous vote severed its relationship with the Savannah Presbytery and the Petitioner Church. In a

resolution, adopted that date, it charged the Petitioner Church's highest judicatory with specific violations of the dogma and discipline that existed at the time of its affiliaton in 1930. Predominantly, the General Assembly of the Petitioner Church was accused of advocating civil disobedience, counseling on the Viet Nam War, and engaging in other political activities—all in violation of the Westminster Confession of Faith and the Constitution of the Petitioner Church.

The action of the Respondent Church was within the freedom of religion clause of the First Amendment of the Constitution of the United States and did not violate the constitution of the Petitioner Church.

About a month after the Respondent Church had disaffiliated, the Savannah Presbytery, a lesser judicatory of the Petitioner Church, appointed an Administrative Commission. This commission adopted a resolution which threatened the peace and integrity of the Respondent Church. Fearful of a trespass upon church property and interference with church activities, the Respondents sought a permanent injunction in the Superior Court of Chatham County, Georgia. The Petitioners answered the Respondents' petition and sought the same equitable relief.

At trial, evidence was presented sustaining the charged violations. It was clear and concisive. It was not rebutted or refuted.

Parts of the Petitioner Church's constitution, which prohibit it from engaging in the activities charged, were introduced. These constitutional inhibitions were the legal standards applied in determining whether or not the Petitioner Church had transgressed its dogma and discipline.

The trial court's verdict and judgment was for the Respondents. The Petitioners then appealed to the Supreme

Court of Georgia. It affirmed the judgment of the lower court. The Petitioners' motion for rehearing was denied.

Subsequently, the Petitioners filed a petition for a writ of certiorari in this Court on April 30, 1968. It was granted on June 10, 1968.

ARGUMENT

I.

The Writ of Certiorari Was Improvidently Granted and Should Be Dismissed

The writ of certiorari should be dismissed as being improvidently granted. Examination of the Petitioners' pleadings from answer to appeal will expose the fatal deficiency in them. No Federal question was raised in the trial court by the Petitioners' pleadings, rulings of the court, or requests for charge. None was presented to the Supreme Court of Georgia in the enumeration of errors in the trial court. None was considered by the Supreme Court of Georgia in its decision affirming the judgment of the trial court.

The decision of the Supreme Court of Georgia did not rule on any constitutional question as the Petitioners failed to raise timely and appropriately any such question under the rules of that Court. In determining whether the Supreme Court of Georgia, either in its initial decision or its subsequent denial of the motion for rehearing, considered or ruled upon a Federal question, reference to the case law of the State of Georgia must be made. That Court has adopted the rule that it will not consider or rule upon a constitutional question unless the same is raised by proper pleading or motion in the trial court, and it must have been ruled upon by the trial court.

The record stands as an indelible account of the Petitioners' absolute failure to raise a constitutional question in the trial court. Further it is mute as to any ruling sought by the Petitioners on a constitutional issue and any ruling rendered by the trial court. This failure becomes a haunting indictment at this stage of the Petitioners' effort to have this Court review the decision of the Supreme Court of Georgia. It becomes a disastrous reality when the rules of the Supreme Court of Georgia are examined and applied.

In *Herrin* v. *Graham*, 209 Ga. 281, 71 S.E. 2d 550 (1952), on an appeal to the Supreme Court in an adoption proceeding, the exceptions recited that the adoption law was illegal and contrary to the Constitution and laws of the State. The Supreme Court in dismissing the constitutional issue held:

> "Where it is sought to invoke a ruling by the Supreme Court on a constitutional question, the question must have been raised in the trial court and a ruling made thereon and the case brought to the Supreme Court for review."

In establishing when the constitutional question must be raised, the Supreme Court of Georgia in *Aiken* v. *Richardson*, 207 Ga. 735, 64 S.E. 2d 54 (1951), stated:

> "Jurisdiction is not vested in the Supreme Court merely because it is contended that an action or judgment is or would be contrary to some provision of the Constitution.
>
> A constitutional question can not be raised for the first time in the Supreme Court. Where it is sought to invoke a ruling by the Supreme Court on a constitutional question, the question must have been raised in the trial court and a ruling made thereon and the case brought to the Supreme Court for review. Assignments of error upon constitutional questions

which are raised for the first time in the bill of exceptions can not be considered by this Court."[1]

Applying the rule in *Aiken*, it is manifest that the Petitioners' effort to raise the constitutional question on the motion for rehearing was simply too little.

The assignments of error involved in *Aiken* are equivalent to the enumeration of errors filed by the Petitioners from the judgment and verdict of the trial court. There the similarity ends. Unlike the Appellant in *Aiken*, the Petitioners did not raise a constitutional question in the enumeration filed in the Supreme Court of Georgia.

Applying the rules of the Supreme Court of Georgia, as no Federal question was properly raised in the trial court, whatever was presented to it on the motion for rehearing and whatever disposition was made of it—absent "entertaining and deciding"—the Supreme Court did not pass upon and could not have considered the Federal questions belatedly raised by the Petitioners in their motion.

Though the above cases are dispositive of the timeliness and appropriateness of the constitutional question, this Court may be interested in what specificity is required to properly raise a constitutional question in Georgia. Definiteness is demanded. The requisite detail is set forth in *Richmond Concrete Products Co.* v. *Ward*, 212 Ga. 773, 774, 95 S.E. 2d 677, 678 (1956). Formulating what is required, the Supreme Court stated:

> "(1) The statute or the particular part or parts of the statute which the party would challenge must be stated or pointed out with fair precision; (2) the provision of the Constitution, which it is claimed has been violated, must be clearly designated; and (3) it must be shown wherein the statute, or some designated part of it, violates such constitutional provision."

---

[1]Also see *Jarvis* v. *State*, 197 Ga. 704, 30 S.E. 2d 484 (1944).

It is acknowledged that these criteria apply to challenging the constitutionality of a statute. However, the second and third criteria are applicable in evaluating whether the Petitioners' pleading in the trial court meets the test of definiteness. Do they clearly designate what provision of the constitution has been violated—and how? The answer filed in the present case alleged:

> "15. Defendants have a right of possession of the subject property under the laws and constitution of the Southern Presbyterian Church, the State of Georgia, and the United States of America.
>
> 16. Since said date of April 17, 1966, the aforesaid Plaintiff and members of the congregation and said Ruling Elders who voted in the affirmative on said Resolution, have appropriated the property which is the subject of this legal action to their use as a Church separate and independent from the Southern Presbyterian Church, said action being in violation of the laws of Georgia, the United States of America, and the Southern Presbyterian Church." (A. 27)

These two paragraphs are the only reference which even vaguely deal with a constitutional issue. It is because of their vagueness as to the specific law or part of the constitution violated that the Petitioners' pleading was inadequate to present a constitutional question in the trial court.

The inadequacy of the Petitioners' pleading is emphasized when compared with *Stewart* v. *Board of Commissioners of Echols County*, 192 Ga. 139, 14 S.E. 2d 728 (1941). In a condemnation proceeding, the Appellant filed a demurrer and a Motion to Dismiss a declaration of taking on a constitutional ground. The Supreme Court of Georgia affirming the overruling of the motion and demurrer held:

> "This respondent demurs and moves to dismiss the declaration, on the ground it contravenes and violates the constitution of Georgia, article 1, section 3, para-

graph 1. This was insufficient to give this court jurisdiction of a bill of exceptions in which error is assigned on the overruling of the demurrer."

When the present case is compared with *Stewart*, which alleged with considerable detail what section of the constitution was violated, it is obvious that the ambiguous language of the pleading fails to meet not only the required specificity as to "what" was transgressed but also "how".

How does the absence of a Federal question in the state court affect the jurisdiction of this Court? It is well settled that when, under the requirements of the rules of practice of the state court, the constitutional issue is not properly raised so it can be considered by the state appellate court, this Court will accept as final the criteria established by the state court.

In *Hartford Life Ins. Co.* v. *Johnson*, 249 U.S. 490, 493 (1919), Mr. Justice Clarke in dismissing the writ affirmed:

> *"It is the settled law that this provision means 'that the claim must be asserted at the proper time and in the proper manner by pleading, motion, or other appropriate action under the state system of pleading and practice,* . . . and upon the question whether or not such a claim has been so asserted, *the decision of the state court is binding upon this court when it is clear, as it is in this case, that such decision is not rendered in a spirit of evasion*, for the purpose of defeating the claim of a Federal right.'"

He added:

> "No suggestion is or could be made, that the Missouri state supreme court's holding in this case was framed to evade the consideration of the Federal right now asserted, for it had long been the established law of that state that, under its system of practice, the construction of either the Federal or state Constitution

would not be treated as involved in a case, in a jurisdictional sense, unless it appeared that such question was raised and ruled on in the trial court. . ." (Emphasis added)

Mr. Chief Justice Taft in *Central Union Telephone Co. v. Edwardsville*, 269 U.S. 190, 195 (1925), reiterated the authority of the state court to prescribe rules as to jurisdiction and practice. He stated:

> "Without any doubt it rests with each state to prescribe the jurisdiction of its appellate courts . . . and the rules of practice to be applied in its exercise; and the state law and practice in this regard are no less applicable when Federal rights are in controversy."[2]

Time has not altered this Court's recognition of the right in the state courts to establish the rules governing jurisdiction and practice. In *Hedgebeth* v. *North Carolina*, 334 U.S. 806, 807 (1948), this Court, in dismissing a writ of certiorari for jurisdictional deficiencies, stated:

> "Petitioners' rights under the Federal Constitution must be pursued according to the procedural requirements of North Carolina."[3]

The Petitioners are attempting to save their dead cause with the panacea that the Federal question was raised in the motion for rehearing. This, too, must fail. To revive the cause with sufficient viability at that stage, the Petitioners must meet the test of specification established by this Court.

In *Capital City Dairy Co.* v. *Ohio ex rel. Attorney General*, 183 U.S. 238, 248 (1902), the specification required by this Court is declared:

> "It is settled that this court, on error to a state court, cannot consider an alleged Federal question,

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[2]Also see *Cox* v. *Texas*, 202 U.S. 446 (1906).

[3]Followed by this Court in *Edelman* v. *California*, 344 U.S. 357, 359 (1953).

when it appears that the Federal right thus relied upon had not been by adequate specification called to the attention of the state court, and had not been by it considered, not being necessarily involved in the determination of the cause. *Green Bay & M. Canal Co.* v. *Patten Paper Co.*, 172 U.S. 62, 67, 43 L. Ed. 365, 368, 19 Sup. Ct. Rep. 97; *F. G. Oxley Stave Co.* v. *Butler County*, 166 U.S. 648, 654, 655, 41 L. Ed. 1149, 1151, 17 Sup. Ct. Rep. 709, and cases cited. *Now, the only possible support to the claim that a Federal question on the subject under consideration was raised below was the general statement in the answer to which we have already adverted, that 'this proceeding is in violation of the Constitution of the United States'. Nowhere does it appear that at any time was any specification made as to the particular clause of the Constitution relied upon to establish that the granting of relief by quo warranto would be repugnant to that Constitution;* nor is there anything in the record which could give rise even to a remote inference that the mind of the state court was directed to or considered this question. On the contrary, it is apparent from the record that such a contention was not raised in the state court."[4] (Emphasis added)

The above language in *Capital City Dairy Co.*, "violation of the Constitution of the United States", is almost identical with that found in Paragraph 16 of the Petitioners' answer. The difference is the use of the word "laws" by the Petitioners rather than the word "Constitution". It is submitted that the broad meaning of the word "laws" renders the Petitioners' answer less specific than that of *Capital City Dairy Co.* However, there is one significant comparison between that case and the present case—the total absence of specification. Neither case specifies what particular law or clause is violated. The absence of specification is fatal to the Petitioners' cause.

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[4]Also see *Harding* v. *Illinois*, 196 U.S. 78 (1904); *Herndon* v. *Georgia*, 295 U.S. 441 (1935).

The rule that this Court has followed when the Federal question was raised for the first time in the motion for rehearing was recognized by Mr. Justice McReynolds in *Godchaux Company* v. *Estopinal*, 251 U.S. 179, 181 (1919). In dismissing the writ of error, he repeated the well established rule of this Court:

> "The settled rule is that, in order to give us jurisdiction to review the judgment of a state court upon writ of error, the essential Federal question must have been especially set up there at the proper time and in the proper manner; and, further, that if first presented in a petition for a rehearing, it comes too late unless the court actually entertains the petition and passes upon the point."[5]

To avoid the error committed in the trial court, the Petitioners with considerable elaboration thrust Federal questions before the Georgia Supreme Court in the motion for rehearing. Assuming that this was not too late under the test in *Godchaux*, did the Supreme Court of Georgia entertain the motion and pass upon the nine grounds asserted therein?

The record negates that it entertained the motion and passed upon the grounds urged. The judgment of the lower court rendered in response to the motion for rehearing was:

> "Upon consideration of the motion for a rehearing filed in these cases, it is ordered that it be hereby denied." (A. 153)

In the sense used by Mr. Justice McReynolds, to entertain the motion is more than just receiving it. This the court had to do under the appellate procedure of the state. Similarly the word "pass" takes on a more substantial meaning than just a terse denial.

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[5]Also see *Radio Station WOW, Inc.* v. *Johnson*, 326 U.S. 120, 128 (1944) and cases cited at page 128.

In *Herndon* v. *Georgia*, 295 U.S. 441 (1935), it was held that the Federal question was never properly presented in the state supreme court unless it was upon the motion for rehearing.[6] Noting that the state court refused to consider it, Mr. Justice Sutherland ruled that unless that court actually entertained the question and decided it, the Federal question is raised too late upon a motion for rehearing.

What was the action of the Supreme Court of Georgia on the motion in *Herndon*? This Court is urged to examine the decision[7] and compare it with the action of the Supreme Court of Georgia in the case under review. It will reveal that the Petitioner in *Herndon*, as here, did not raise a Federal question until after the Supreme Court of Georgia had rendered its judgment. Petitioner then filed a motion for rehearing, asserting that the statute was repugnant to the due process clause of the Fourteenth Amendment. In dealing with the constitutional question raised, the Georgia Court, in appraising the motion for rehearing, stated:

> ". . . , it is a mere attempt to draw into question the constitutionality of the statute under which the defendant was convicted, where no such question was raised and passed upon in the trial court. Under repeated rulings by this court, a constitutional question can not be so presented. . . Where it is sought to invoke a ruling by the Supreme Court on a constitutional question, the question must have been raised in the trial court and a ruling made thereon and the case brought to the Supreme Court for review." (179 Ga. at 600, 601)

The above is merely part of the opinion which, in considerable detail, records why the Supreme Court of Georgia

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[6]There was a preliminary attack in the trial court on the ground that the statute was in violation "of the constitution of the United States", 295 U.S. at 443.

[7]*Herndon* v. *State*, 179 Ga. 597, 176 S.E. 620 (1934).

declined the motion for rehearing by the Appellant Herndon.

The decision denying the rehearing before the Georgia Supreme Court contains seven pages. The decision complained of by the Petitioners contains eight lines. Yet there is similarity in the judgments rendered. In *Herndon* the Court stated:

> "There is no merit in the Motion for Rehearing. The Motion for Rehearing is denied."

In the present case the court stated:

> "The Motion for Rehearing is without merit and is denied,"

Though Mr. Justice Sutherland did not define in *Herndon* what is meant by "entertains and decides", prior decisions of this Court made any detailed definition unnecessary. In *McMillen* v. *Ferrum Mining Co.*, 197 U.S. 343, 347 (1905), this Court, in dismissing a writ of error where the Federal question was raised for the first time in the state court in a motion for rehearing, stated:

> "It is sufficient for the purposes of this case to say that no Federal question appears to have been raised until the petition was filed for a rehearing. *This was obviously too late, unless, at least, the court grants the rehearing and then proceeds to consider the question.*" (Emphasis added)

Subsequently, in *The Disconto Gesellschaft* v. *Umbreit*, 208 U.S. 570, 577, 578 (1908), this Court, commenting upon the action of the state court on a motion for rehearing, held:

> "No allegation of Federal rights appeared in the case until the application for rehearing. In this application it was alleged that the effect of the proceedings in the state court was to deprive the plaintiff in error of its property without due process of law, contrary to

> the 14th Amendment, and to deprive it of certain rights and privileges guaranteed to it by treaty between the Kingdom of Prussia and the United States. The supreme court of Wisconsin, in passing upon the petition for rehearing and denying the same, dealt only with the alleged invasion of treaty rights, overruling the contention of the plaintiff in error. It is well settled in this court that it is too late to raise Federal questions reviewable here by motions for rehearing in the state court.
>
> *An exception to this rule is where the supreme court of the state entertains the motion and expressly passes upon the Federal question.*" (Emphasis added)

What was ruled by this Court in *McMillen* and *Gesellschaft* has been reaffirmed in *Paraiso* v. *United States*, 207 U.S. 368, 370 (1907) and *Forbes* v. *State Council*, 216 U.S. 396, 399 (1910), where this Court asserted that the Federal question must, in fact, have been passed on when the Federal question was raised for the first time in the state court in the motion for rehearing. All subsequent cases treating this issue, including *Herndon*, must be interpreted in the light of what was held by this Court in *McMillen* and *Gesellschaft*.

If under the long established "entertains and decides" test mentioned by Mr. Justice Sutherland, the action of the Supreme Court of Georgia on the motion for rehearing filed by the Appellant in *Herndon*, failed to meet the test, there is no question that the decision of the Supreme Court of Georgia in the case under review by this Court did not meet it. None of eight sentences, which comprise the opinion as distinguished from the judgment, declare that the Georgia Supreme Court granted the rehearing and proceeded to answer the questions presented.

In *Herndon*, that Court consumed three of the seven page opinion in replying why no constitutional question

was properly presented before the court. It did this after reciting in detail the grounds of the motion which comprise the first three pages of the opinion. The present case is in marked contrast to the detailed decision of the Supreme Court of Georgia in denying the motion in *Herndon*.

If this is not dispositive of the motion for rehearing, this language of the court will be. The Court declared:

> "Indeed it may be said that under the provision of our constitution, art. 6, sec. 2, par. 5 (Code Section 6502), which provides that the Supreme Court 'shall be a court alone for the correction of errors,' this court would in no event have jurisdiction to consider the merits of any question which is either intentionally or unintentionally omitted in the trial court. It is upon errors alleged by the complaining party to have been committed in the court below that this court must confine itself." (179 Ga. at 601)

The article of the Constitution referred to in *Herndon* as Code Section 6502 is now designated Code Section 3-204 of the Georgia Annotated Code. By statute and decision, the Supreme Court of Georgia had no jurisdiction of a constitutional question when the Petitioners appealed. There being no constitutional question presented in the Petitioners' pleading and none raised by motion or other appropriate action at trial, the trial court made no decision upon a constitutional question. It must follow that no error involving a constitutional question was brought to the Supreme Court of Georgia for review.

Though the judgment of the Supreme Court of Georgia on the motion for rehearing is silent as to any Federal question raised by the motion, the language of the Supreme Court of Georgia in *Herndon* is appropriate:

> "Accordingly, no question as to the constitutionality of Section 56 (statute) is presented, and none is decided." (179 Ga. at 601, 602)

As the Petitioners failed to seasonably raise the Federal question in the trial court under the procedure and laws of the State of Georgia, as no Federal question was entertained and expressly passed upon by the Supreme Court of Georgia in the motion for rehearing, and as the Petitioners' pleading failed to meet the specification standards of this Court, the writ of certiorari granted by this Court on June 10, 1968, should be dismissed as having been improvidently granted for lack of jurisdiction.

II.

Watson v. Jones, 80 (13 Wall.) U.S. 679 (1871), Is Not Violated Where the Highest Judicatory Has Transgressed Its Constitution

Where a property right between a local congregation and a representative church rests upon the conduct of the highest church tribunal, the civil court has the responsibility to determine if the church authority acted within its constitution. It is not required to blindly follow or accept the legal formula pronounced in *Watson* v. *Jones*, 80 (13 Wall.) U.S. 679 (1871), where it is proven that the highest tribunal has departed from the organic law that existed at the time of the affiliation of the local church.

The rigid formula promulgated in *Watson* lost its inflexibility in the succeeding years. The most recent case which has tested its rigidity is *Romanian Orthodox Missionary Episcopate* v. *Trutza*, 205 F. 2d 107 (1953). The facts are reminiscent of those contained in *Kedroff* v. *St. Nicholas Cathedral*, 344 U.S. 94 (1952). The spectre of the domination of the church by a Communist government resulted in a church property conflict between the alleged bishop appointed by a submissive Romanian Patriarch and the local episcopate. In finding for the episcopate, the Sixth Circuit Court of Appeals found that the episcopate

had the authority to revoke its affiliation with the Romanian Patriarch and Holy Synod of Romania because of the dictation of ecclesiastical appointments by the Communist controlled government. The court observed:

> "We also think that this conclusion is in accord with the spirit if not the letter of the *Kedroff* case, which declares that freedom to select the clergy, where no improper methods of choice are proven. . ." (205 F. 2d at 112)

Once again *Watson* as it pertains to the representative type of church government was modified. The decision of the Sixth Circuit Court of Appeals considered the propriety or impropriety of the methods of functioning on the highest church level. If the methods of the highest church judicatory or its equivalent are proven to have been improper, the court may look beyond the rule formulated in *Watson*.

The questioning of the unlimited power of the highest church judicatory began with *Bouldin* v. *Alexander*, 82 (15 Wall.) U.S. 131 (1872). With *Bouldin* the courts began to demand from the church tribunals adherence to basic concepts of equity. By implication *Bouldin* established that the court would only defer to a church tribunal which had followed its own procedural rules. This Court said:

> "In a congregational church, the majority, if they adhere to the organization and to the doctrines, represent the church."[8]

In *Brundage* v. *Deardorf*, 55 F. 839 (1893), which involved a dispute between two factions of the church of the United Brethren of Christ, a national hierarchical church, Judge Taft stated at pages 847-848:

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[8]*Bouldin* v. *Alexander*, 82 (15 Wall.) U.S. at 140.

> "Even if the supreme judicatory has the right to construe the limitations of its own power, and the civil courts may not interfere with such a construction, and must take it as conclusive *we do not understand the supreme court, in Watson v. Jones, to hold that an open and avowed defiance of the original compact, and an express violation of it, will be taken as a decision of the supreme judicatory which is binding on the civil courts.* Certainly, the effect of Watson v. Jones cannot be extended beyond the principle that a bona fide decision of the fundamental law of the church must be recognized as conclusive by civil courts. *Clearly, it was not the intention of the court to recognize as legitimate the revolutionary action of a majority of a supreme judicatory, in fraud of the rights of a minority seeking to maintain the integrity of the original compact.*" (Emphasis added)

The impact of *Watson* was further minimized by *Gonzalez* v. *Archbishop*, 280 U.S. 1 (1929). Mr. Justice Brandeis observed at page 16:

> "In the absence of fraud, collusion or arbitrariness, the decisions of the proper Church tribunals on matters purely ecclesiastical, although affecting civil rights, are accepted in litigation before the secular courts as conclusive, because the parties in interest made them so by contract or otherwise."[9]

The modification of *Watson* by the federal judiciary continued with *Sims* v. *Greene*, 160 F.2d 512 (1947). In determining the procedural validity of the removal of a contesting bishop, the Third Circuit Court of Appeals in applying the law of the forum, the State of Pennsylvania, quoted from the opinion of Mr. Justice Williams of the Supreme Court of Pennsylvania in *Kreker* v. *Shirey*, 163 Pa. 534, 30 A. 440 (1894):

[9]See also *Serbian Eastern Orthodox Diocese* v. *Ocokoljich*, 219 N.E. 2d 343, 350 (Ill. 1966).

"The power of a civil court, as distinguished from that of an ecclesiastical tribunal, in respect to disputes between warring church factions is limited to an ascertainment of the pertinent church law, to inquiry as to whether or not that law has been conformed with by the churchly tribunal or judicatory, and to the enforcement of the judgment or order of the religious tribunal or judicatory if the order or judgment of the tribunal or judicatory of the church has been reached in accordance with the law of the church." (160 F. 2d at 515)

The adoption of the law of Pennsylvania by the Third Circuit Court of Appeals brings the tests projected by Judge Taft and Mr. Justice Brandeis into precise focus. No longer were the Federal courts bound by the formula of *Watson* v. *Jones, supra.*

The Supreme Court of Georgia has affirmed the proposition that judicial abstention is not absolute even in the internal affairs of a religious association. The courts will assume jurisdiction to decline the enforcement of a decision of an ecclesiastical tribunal where to enforce such decision would be offensive to the peace and good order of society, would approve an arbitrary or ultra vires act, or would be repugnant to the principle of equity.

III.

The Decision Complained of Justifies the Application of the Principles of Brundage v. Deardorf, 55 F. 839 (1893) and Gonzalez v. Archbishop, 280 U.S. 1 (1929), Which Modified Watson v. Jones, 80 (13 Wall.) U.S. 679 (1871)

The decision complained of can be affirmed by this Court under the principles enunciated in *Watson* v. *Jones, supra,* as modified by subsequent decisions. When *Watson* was decided in 1871, Mr. Justice Miller, in his classification of church systems, placed the civil courts in a sub-

ordinate role to the authority of the highest court of the representative class. That decision was challenged one year later in *Bouldin* v. *Alexander, supra.* The right of absolutism, apparently granted under *Watson* to the highest judicatory, came under subsequent scrutiny in *Brundage* v. *Deardorf, supra,* and *Gonzalez* v. *Archbishop, supra.* First Judge Taft and then Mr. Justice Brandeis questioned the thesis that the church could do no wrong. Each spelled out under what circumstances the civil court would reject the rubber stamp role of merely formalizing the actions of the highest church authority. *Kedroff* v. *St. Nicholas Cathedral,* 344 U.S. 94 (1952), swung the pendulum back towards *Watson* with the emphasis on the supremacy of the highest church authority.

Freedom of religion in its essence, if it is to mean anything, should mean the freedom in the individual to worship or not to worship, to affiliate or to disaffiliate. It is the collective rights of the individual worshipper of the Respondent Church, which are to be determined. The congregation voted unanimously to sever its relationship with the Petitioners.[10] What a worshipper could do individually, he could do collectively[11] under the guard of the First Amendment.

The soundness of *Kedroff* as good precedent is questionable. Its elevation of the liberty of the institution above that of the individual subverts the freedom clause of the First Amendment and contradicts this Court's philosophy of protecting the rights of the individual. This theory is persuasively presented in the following quotation:

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[10]Testimony of Mr. Frank L. Perry. (A. 92)

[11]There is no prohibition in the Petitioner Church's constitution against a local church withdrawing. Testimony of Dr. Ben Rose. (A. 98)

> "If liberty is to mean anything, it must refer to individuals, not to institutions qua institutions—state, church, labor, or otherwise. It is not even an extension ad absurdum of the *Kedroff* reasoning to remark that it permits of higher church authorities the perpetration of fraud and deceit on their adherents, for alone as a self-limitation of the decision was something unfortunately sounding in 'clear and present danger'. The Court appeared unconcerned with the Soviet Communist influence in the affairs of the Russian church. That disposition is not surprising, for the institutional application of constitutional liberties leads logically to a stultification of the great Anglo-American concepts of property rights, among which is free contract, and the application thereto of common law concepts of fraud, deceit, duress, and the other developments which contribute to a well-ordered but free society."[12]

Issues arising from the fraudulent, arbitrary, or ultra vires conduct of the highest church tribunal which involve property rights will be heard by the civil courts. This theory is what might be called, the equitable, middle ground between *Watson* and *Kedroff*. The civil courts rightfully assume judicial oversight because of their inherent power to keep the peace in matters of property.

The civil court acts as a referee between the two disputants. This it should, when constitutional abuses of the highest church tribunal are present. There could be no greater exercise in futility, than for a local church to seek redress in the highest church court which had committed the transgressions that are the basis of the dispute. The highest tribunal would be acting in the capacity of judge and jury. Equity and justice would have little chance in such a forum.

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[12]Richard W. Duesenberg, "Jurisdiction of Civil Courts Over Religious Issues", 20 Ohio State Law Journal, 508, 548 (1959).

If this Court concurs that in certain circumstances, the church should not be the arbiter of charged transgressions, how can it set the guidelines so that imagined or contrived complaints do not find their way to court?

First, restrict the judicial inquiry into issues involving the fraudulent, arbitrary or ultra vires actions of a church court. Such limitations are compatible with *Bouldin*, *Brundage*, *Gonzalez*, *supra*, and more recently *Romanian Orthodox Missionary Episcopate* v. *Trutza*, *supra*.

Second, examine the church's concept of property. Since its infant years, the Petitioner Church has embraced a congregational policy towards local church property.[13] This is evident in Paragraph 6-2 of the Book of Church Order[14] which grants to the local church absolute authority

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[13]This historical position is presented in the section entitled, "The Rigid Enforcement by This Court of *Watson* v. *Jones*, will Create a Tyranny of Property." p. 23, *infra*.

[14]"6-2. If a particular church is incorporated, the provisions of its charter and by-laws must always be in accord with the Constitution of the Presbyterian Church in the United States. If the congregation is an incorporated body, all the communing members on the active roll of that church shall be members of the corporation. The officers of the corporation, whether they be given the title "Trustee" or some other title, shall be elected from among the members of the corporation in regularly constituted congregational meetings. The powers and duties of such officers must not infringe upon the powers and duties of the Session or the Board of Deacons. All funds collected for the support and expense of the church and for the benevolent purposes of the church shall be controlled and disbursed by the Session and the Board of Deacons as their relative authorities may from time to time be established and defined. To the officers of the corporation may be given by the charter and by-laws of the corporation any or all of the following responsibilities; the buying, selling, and mortgaging of the property for the church, the acquiring and conveying title to such property, the holding, and defending title to the same, the managing of any permanent special funds entrusted to them for the furtherance of the purposes of the church, provided that such duties do not infringe upon the powers and duties of the Session or of the Board of Deacons. In buying, selling and mortgaging real property such officers shall act solely under the authority of the corporation, granted in a duly constituted meeting of the corporation." (Respondent Church's corporate charter vests it with the powers granted in this paragraph.)

in the acquisition and alienation of property. The powers granted in this paragraph can be exercised free of any dominion of the Petitioner Church or lesser judicatories.[15]

Third, determine the amount of local autonomy. The limited judicial control over a local church by the Petitioner Church is confirmed by the autonomy granted the local church under the church polity. This independence includes: the election of ministers, the discipline of membership, the financing of programs, and the administration of church affairs. These temporal rights (property and administration) are the prerogatives of the local church.

Relating the historical concept of property to the autonomy of the local church, the Petitioner Church takes on a dual status—representative in spiritual matters, but congregational in temporal matters. The dual status established by the church polity permits this Court to modify *Watson* as it pertains to churches of the limited representative class.[16]

The fourth guideline is found in *Stewart* v. *Jarriel*, 206 Ga. 855, 55 S.E. 2d 368 (1950). Commenting when the courts may intervene in the internal affairs of a church, the Court said:

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[15]The dispute in *Watson* involved what is now the Presbyterian Church U. S. A. (North). That church claimed dominion over the property of a local church. This policy was one of the obstacles to the reestablishment of relations between the Petitioner Church (Southern) and the Northern Church in 1875. (A. 97-98) This diametric difference in the philosophy of property reveals a fundamental difference in the polity of the two churches.

[16]"In the last analysis it must be said that all church societies may not lend themselves precisely to the three categories set forth in *Watson* v. *Jones* . . ., there may be varying degrees of autonomy. Where, . . . the Diocese has reserved unto itself certain powers of church administration . . . , and granted unto a superior tribunal, limited powers . . . those reserved powers must be protected. . . ." *Serbian Eastern Orthodox Diocese* v. *Ocokoljich*, 219 N.E. 2d at 352-353.

> *"So long as a professed creed is not subversive of the peace and good order of society,* it is not within the province of any department of the government to settle differences in creeds or determine what ought or ought not to be a fundamental of religious belief." (Emphasis added)

What is more subversive of peace and good order than to advocate "man is above the law"? This the Petitioner Church did at its General Assembly in 1965 and 1966, when it approved and reapproved civil disobedience.

These four criteria will limit abuse by any factious dissident. If he does not meet the test, the court will deny the adjudication of his complaint.

IV.

The Rigid Enforcement by This Court of Watson v. Jones, 80 (13 Wall.) U.S. 679 (1871), Will Create a Tyranny of Property

Basically the decision of the Supreme Court of Georgia affirmed the proposition that judicial abstention is not absolute even in the internal affairs of a religious association. Further, it acknowledged that courts will assume jurisdiction to reject the enforcement of a decision of a church tribunal where to enforce such would be offensive to the peace and good order of the commonwealth, would approve a collusive, fraudulent, or ultra vires act or would be repugnant to the principles of equity. The actions of the General Assembly of the Petitioner Church offend all of these.

Can this Court subscribe to the proposition that once a local church affiliates with a representative denomination that it is bound irrevocably by any act committed by the highest tribunal, be such act, valid or invalid, on the assumption that such is beyond judicial review? If this

Court should, it will establish tyrannical power in the highest church court. For no matter how far it may transgress its law, it can coerce a dissenting local church by wielding the bludgeon of property.

If this Court should find that conduct by the highest church tribunal, be it collusive, arbitrary, or ultra vires, be it inimical to the peace and good order of society, or be it violative of equity and conscience, is beyond judicial scrutiny, this will give the highest body of the representative church a "carte blanche" to do what it wills absolutely and without fear of legal redress. Armed with such absolute authority, a church court could advocate anarchy, embrace communism and deny the infallibility of the Bible. From the present conduct and orthodoxy of some church leaders, this is a dire possibility.

Such apostasies could be made with utter disregard for the outraged repercussions. For, if an incensed local church expressed its disapproval by withdrawal from the parent body, it would lose its property. This, then, will be the tragic impact of this Court's decision should it rigidly enforce *Watson* v. *Jones, supra.*

Forcefully as present, as the two propositions offended by the Petitioner Church, i. e., conduct inimical to the peace and good order of society and actions violative of the church's constitution, is the third, that of equity. It is present because of the early positioning of the Petitioner Church on the question of property rights, and its denunciation of *Watson* v. *Jones, supra.* More contemporary is the equity related to the history of the acquisition of the Respondents' property.

The Petitioner Church had its genesis in 1861 in Augusta, Georgia. Almost at its incipience the issue of property rights of the lesser judicatories (church, presby-

tery, and synod) was raised. In 1867 the Synod of Kentucky of the Presbyterian Church U.S.A. (North) sought to affiliate with the Petitioner Church. In a letter to the Petitioner Church, it prescribed a set of principles upon which it would join. One of these was the right in the synod to retain all legal claims and rights to property. In 1867 in response to the petition of the Synod of Kentucky, the General Assembly of the Petitioner Church, upon the recommendation of its committee submitted the following resolution which in part provided:

> "4. That this Assembly cordially approves of the determination of the Synod of Kentucky, as expressed in the fourth resolution of its minutes of June 28th, 1867, communicated by its commissioners to the Assembly to assert fully all its legal claims as a part of the 'Presbyterian Church in the United States of America', and to reserve all its legal rights of property as a Synod in any union which may be formed with this body." (A. 103)

Again in 1875, the Petitioner Church was confronted with the question of church property. Noting the turbulence within the states of Missouri, Kentucky and Tennessee, the General Assembly of the Petitioner Church adopted a resolution confirming the historical position of the church enunciated in 1839.[17] In presenting a resolution on church property, the Assembly made the following policy statement, which expressly disallowed any application of the "Walnut Street" decision to the Petitioner Church:

> "And now, without entering into a discussion concerning the *decision of the Supreme Court of the United States, in the case of the Walnut Street Church, Louisville, Ky., or how far the action of the General Assembly (North) of 1872, in approving the principles there laid down, was inconsistent with the action of*

[17]From minutes of Presbyterian Church U. S. A., of which it was formerly a part.

both the Old and New School Assemblies in approving precisely the opposite principle laid down by the courts of Pennsylvania, in the controversy of 1837 and 1839 (See Church case in Baird's Digest), we here propose that this whole matter shall be submitted to arbitration on the principles presented in the paper adopted by the Old School Assembly of 1839, and of which, for convenient reference, as well as general information, a copy is here given as follows (1839), p. 158):" (Emphasis added)

The principles referred to were those of equitable distribution, spelled out in 1839 in the following position on church property:

"Be it resolved by the General Assembly of the Presbyterian Church in the United States of America,

1. That this body considers itself and the Church at large bound, as both have been not only willing, but desirous, to adjust all claims against the corporate property of the Church, *whether legal or equitable*, in the most prompt, fair and liberal manner.

2. That this is especially the case touching any claims which may exist on the part of the four Synods of Utica, Geneva, Genesee and the Western Reserve, declared in 1837, to be no part of the Presbyterian Church or on the part of those who seceded from the Church in 1839, or on the part of any body constituted out of the whole or any part of these bodies and persons, the Assembly will faithfully adhere to any pledge or promise, express, or implied which it can justly be construed ever to have made, and will fulfill every expectation which it ever knowingly allowed to be cherished.

3. The Trustees of the Assembly are hereby authorized and requested to do, on the part of this Assembly should occasion offer, whatever is lawful, competent and equitable in the premises, conformable to the principles, and in the manner heretofore laid down

in the minutes of this Assembly for 1837 and 1838, so far as related to the corporate property of the Church, or any equities springing out of the same.

4. With reference to all institutions, corporations, congregations, and other public persons or bodies in connection with us, but holding property for ecclesiastical purposes, or for religious and benevolent uses, which property is not subject to the control of the Assembly, although the said person, institutions or congregations may be in all such cases where difficulties relating to property have arisen or shall arise in consequence of the long and painful disorders and divisions in our church, *we advise all our members and friends to act on the general principles heretofore laid down, and with the spirit of candour, forbearance, and equity which has dictated this Act.*

5. The Assembly reiterates the declaration, that its chief desire, in all this part of our church troubles, is to do even and ready justice to and between all persons and interests over which it has any control, or in regard to which it has any duty to perform. (Baird's Digest, p. 800)."

"In accordance with the excellent Christian spirit of this paper, we propose that a plan shall be now arranged by which so far as possible, all matters of church property that are in dispute, or that have not been parties, and all claims to property of any kind shall be settled by arbitration upon principles of equity and fair dealing as becometh Christians.

Should this proposal be such as you approve, we suggest that the details may be most satisfactorily arranged after an oral conference between the two committees." (A. 104, 105, 106) (Emphasis added)

The action of the General Assembly of 1875 was definite. It did one thing. It rejected the principle of *Watson v. Jones, supra* (referred to as the Walnut Street decision), as applying to the Petitioner Church (Presbyterian Church

U.S.), and confirmed the early position of the Petitioner Church which permitted congregations, presbyteries and synods to take the property with them.

This Court might conclude that the adherence to the precepts of the Old School Assembly referred to in the resolution of the General Assembly of 1875 was subsequently denounced. Such is not the case. The second paragraph of the 1964 revised edition of the Petitioner Church's Book of Church Order, at page 7 states:

> "When the Presbyterian Church in the United States (the Presbyterian Church in the Confederate States of America) came into being in 1861, it adopted the polity and discipline which had been in use in the Old School Assembly prior to the rupture." (R. 716 et. seq.)

This historical concept which emerged in the infant years of the Petitioner Church never has been rescinded. Only within the past two decades have any assaults been made upon it. These occurred in 1949, 1951,[18] and 1953. They were repulsed.

The principles of equity which governed the early church are present today. They should be invoked by this Court in behalf of the Respondents.

The equitable proposition becomes more significant when the history of the property owned and held by the Respondents is exposed. Of the three parcels, neither the Petitioner Church nor any of its lesser judicatories have any money invested in them. If a check list were made, it would read: acquisition, none; maintenance, none; debt service, none. The property on which the church shrine is located was a grant from the Independent Presbyterian Church in Savannah which has no formal connection with

[18]Statement of Ad Interim Committee Presented to General Assembly of Petitioner Church in 1951. (A. 107)

the Petitioner Church. The remaining properties which were acquired since December, 1930, have been paid for exclusively by the tithes, pledges, and offerings of the local church membership.

If this Court should ignore the equitable principle honored by the Petitioner Church for more than a century, it will create what has been described as:[19] "A denomination with a shrine, a shrine without worshippers, and worshippers without a shrine." This Court will have wrought by judicial fiat what the General Assembly of the Petitioner Church failed to do by legislative enactment.

V.

Is the General Assembly of the Petitioner Church So Sovereign That It Can Ignore the Church's Constitution Without Fear of Judicial Intervention

The Respondents charge that the Petitioner Church has offended its constitution. They ask, "is the power of the General Assembly so absolute that it is absolved from complying with its constitution?" If it is, it enjoys a unique position among voluntary associations. Labor unions and fraternal societies have been held to precise and strict compliance with their constitutions.

By demanding strict adherence to their organic laws, the courts are exacting from voluntary associations obedience to standards promulgated by them. Applying the rule of precise compliance to religious associations will not impose an unreasonable requirement upon them.

The Courts by imposing limitations on the actions of voluntary associations have established the authority to review their conduct. This judicial oversight is assumed to assure that substantive rights are not procedurally vio-

[19]Richard W. Duesenberg, "Jurisdiction of Civil Courts Over Religious Issues", 20 Ohio State Law Journal, 508, 548 (1959).

lated. Generally, the courts in examining the conduct of a voluntary association have adhered to the precise or strict standard. This has been true even in the sensitive realm of religious societies. The courts will not defer to the autonomy of a religious organization unless all of the procedural safeguards granted by its constitution have been followed impeccably. Applying the theory of *Bouldin* v. *Alexander, supra*, the Court in *Briscoe* v. *Williams*, 192 S.W. 2d 643, 646 (Mo. 1946), declared:

> ". . . , it assumes that the constitution was intended to be mutually binding upon all, and it protects the society in fact by recalling it to a recognition of its own organic law."

What was expressed in *Briscoe* was affirmed in *Trustees of Delaware Annual Conference* v. *Ennis*, 29 A. 2d 374 (Del. 1942). The Court condemning the ultra vires action of the General Conference of the Methodist Church held:

> "It was, thus, plainly beyond the power of the General Conference to make such a drastic change in the organic law of the church as to confer upon a committee any jurisdiction properly exercisable by a bishop alone."

Echoing the principle sounded in *Bouldin*, the Court in *Epperson* v. *Myers*, 58 So. 2d 150, 152 (Fla. 1952), after noting the traditional deference to a church tribunal, stated:

> ". . . the exception that when there is a showing of fraud, collusion or arbitrary conduct on the part of the church authorities, the courts will interfere to protect the rights of those imposed on."

Continuing the Court declared:

> "When a 'faction' of the church arrogates authority to itself, disrupts the organization and sets at

> naught well-defined rules of church order, there is no course left for those who desire their rights settled through orderly processes but to resort to the courts."

In *Randolph v. First Baptist Church of Lockland*, 120 N.E. 2d 485, 496 (Ohio 1954), the Court, in an opinion containing citations from numerous state courts, quoted approvingly from *Kerr's Appeal*, 89 Pa. 97 as follows:

> "The decree of a church judicatory is binding only where it is affirmatively shown that it has acted within the scope of its authority, and has observed its own organic forms and rules."

Legal principle and equity demand that the highest tribunal of any voluntary organization, be it fraternal, labor, or religious, abide by its organic laws. The courts cognizant of possible abuse, if the organic law is not faithfully followed, have taken jurisdiction to restrain or rectify any abuse.

Is a religious society so sacrosanct that its actions are not reviewable by a judicial tribunal, as are those others of voluntary associations? The courts have uniformly answered in the negative. It would appear that the basic rationale for such a response is this simple test. Churches and other voluntary associations have through their constitutional processes promulgated the organic rules of the society for the protection of the association, lesser bodies and the individual members.

When an ecclesiastical decision is challenged for noncompliance with the church constitution, judicial oversight is based upon equity. Judicial intervention is warranted to require church judicatories to follow the same standard they would impose upon lesser bodies.

The constitution of the Petitioner Church represents the collective thinking of the church from the Conference

of the Westminster of Divines in 1643 to date. In the succeeding years, since the adoption of the Westminster Confession, it has been affirmed, with modifications, in subsequent constitutions. It was the law in December, 1930, when the Respondent Church affiliated with the Petitioner Church.

Stripped of the impassioned cry of separation of church and state, this Court is confronted with the unsophisticated issue of whether or not the Petitioner Church is judically accountable for violating its constitution. There is no question of dogma; there is no interpretation of faith; there is the issue of constitutional accountability.

The Respondents contend, and this has been affirmed by the Supreme Court of Georgia, that the Petitioner Church through the actions of its General Assembly has violated specific sections of the Confession of Faith and Book of Church Order. The sound and fury which has been raised can be quelled by applying the organic law of the Petitioner Church to the charged transgressions. The Petitioner Church's constitution declares:

> "Synods and councils are to handle or conclude nothing but that which is ecclesiastical: and are not to intermeddle with civil affairs which concern the commonwealth unless by way of humble petition in cases extraordinary; or by way of advice for satisfaction of conscience, if they be thereunto required by the civil magistrate," (Ch. XXXIII, par. 4)

> "It is the duty of the people to pray for magistrates, to honor their persons, to pay them tribute and other dues, to obey their lawful commands, and to be subject to their authority, for conscience' sake. Infidelity, or difference in religion, doth not make void the magistrate's just and legal authority, nor free the people from their due obedience to him; from which ecclesiastical persons are not exempted. . ." (Ch. XXV, par. 4).

> "The power which Christ has given his Church is wholly moral and spiritual, and constitutes the Church a kingdom and government distinct from the civil commonwealth. . ." (Ch. I, par. 1-2). (A. 134)

Mindful that these sections of the Confession of Faith and Book of Church Order were part of the organic laws of the Petitioner Church in 1965 and 1966, do the actions of the General Assembly[20] offend them? The constitution either means what it says, or it says nothing. If it means what it says, the Supreme Court of Georgia must be affirmed. If it says nothing, then three hundred years of adherence to the inspired wisdom of consecrated men is mocked.

From *Watson* to *Kedroff* the courts have been plagued by where to draw the line in reviewing the conduct of the highest church court, where such is charged by a lesser church body to be noxious to its interest and violative of a particular part of the ecclesiastical law. They have concluded that they do not have to blindly adopt the decision of the highest church court as valid just because that supreme body acted. Judicial intervention is justified because the church constitution delimits the relation of the governor and the governed.

The theory of exacting strict adherence to the constitution of a church was advocated in *Bear* v. *Heasley*, 98 Mich. 297, 57 N.W. 376 (1893). Where the question of property right arose from the violation of the church's constitution by its General Conference (highest tribunal) the Court, finding for those in possession of the property, held:

> *"The constitution, having been adopted as the supreme law of the church, must be supreme alike over the assembly and people. If it is not, and only bind-*

[20]Resolutions of the General Assembly of 1965 and 1966 on civil disobedience and Viet Nam (129-133, 64-67).

> *ing on the latter, the supreme judicatory is at once a government of despotic and unlimited powers.* But we hold that the assembly, like other courts, is limited in its authority by the law under which it acts; and when rights or property which are secured to congregations and individuals by the organic law of the church are violated by unconstitutional acts of the higher courts, the parties thus aggrieved are entitled to relief in the civil courts, as in ordinary cases of injury resulting from the violation of a contract or the fundamental law of a voluntary association." (Emphasis added)

The civil courts have properly assumed jurisdiction where there is an obvious violation of the church law with a resulting impairment of the property interest of the local church. If, as here, the charged infraction involved a flagrant violation of the church discipline, the courts more readily intervene. The dismal swamp of dogma is circumvented by following the route of discipline.

In keeping to the demarked path of discipline, the civil courts find themselves on familiar ground. For in reviewing the conduct of a church court which has disdained its constitution, the review is comparable to that of a civil court examining the act of a legislative assembly. The right in that sovereign body to act is unquestioned. But, as this Court is intimately aware, there is a distinction between acting validly and a valid act. Annually the assemblies of the states and the Federal Congress pass legislation according to the procedural rules. Years later their enactments may be contested in the courts. Many are struck down—procedurally valid, but legally void.

When the Petitioner Church, through its General Assembly, acted beyond its constitution, its autonomy became subject to judicial examination. The Supreme Court of Georgia so found.

VI.

Under the Circumstances the Respondents Did Not Have to Appeal from the Actions of Either the General Assembly or the Administrative Commission

The Petitioners have attempted to make an issue of the Respondents' inaction with regard to the pronouncements on civil disobedience made by the General Assembly (highest tribunal) of the Petitioner Church at its annual conference in 1965. This issue is grounded on the fact that the Respondents did not appeal this action.

Actually, there is no issue other than that contrived by the Petitioners. It can be disposed of by one question. Must a lesser tribunal appeal the ultra vires act of the supreme judicatory of a representative church? Apparently unaware to the Petitioners, this has been answered by the courts in the negative.

In *Trustee of Delaware Annual Conference* v. *Ennis*, 29 A. 2d 374 (Del. 1942), the Court responding to the issue of the failure of the Defendant to appeal an act of the General Conference of the Union American Methodist Episcopal Church held that it was not necessary for the Defendant to appeal the findings of a church tribunal (committee) which contravened the discipline (the law of the church) as the same was nugatory. This conclusion in matters involving religious societies has its parallel in numerous holdings by this Court.

Mr. Justice Field in *Norton* v. *Shelby County*, 118 U.S. 425 (1886), defined the ineffectiveness of an unconstitutional act:

> "An unconstitutional act is not a law; it confers no rights; it imposes no duties; it afford no protection; it creates no office; it is, in legal contemplation, as inoperative as though it had never been passed." (118 U.S. at 442)

The action of the 1965 General Assembly countenancing civil disobedience was a patently unconstitutional act.[21] Being such, it was a nullity. No appeal was needed.

In response to the Petitioner's cry that the Respondents did not appeal from this action, the Supreme Court of Georgia replied:

> "Here, the Administrative Commission appointed by the Savannah Presbytery made no decision as to whether the general church had abandoned its original tenets of faith and practice. Furthermore, the local churches were not required to seek an adjudication of such issue within the framework of the general church because the diversions complained of had already occurred and the local churches had withdrawn and severed their connection with it." (A. 124-125)

This riposte exposes the fallacy of the Petitioners' outcry.

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[21]The unconstitutionality of this action is affirmed by reference to pp. 136-137 (R. 711) of the Westminster Confession of Faith. Nowhere in the record is it shown that the Petitioner Church positioned itself on civil disobedience "by way of humble petition in cases extraordinary"; "by way of advice for satisfaction of conscience, if they be thereunto required by the civil magistrate." It is obvious that the first qualification refers to actions by the Government which are inimical to a church's interest under the guarantee of the First Amendment. The second is self-explanatory. The Church may act when its advice is sought by the commonwealth.

Of course the Petitioners have studiously avoided adverting to other parts of the Confession of Faith and Book of Church Order which have been transgressed:

> "It is the duty of the people to pray for magistrates, to honor their persons, to pay them tribute and other dues, to obey their lawful commands, and to be subject to their authority, for conscience' sake. Infidelity, or difference in religion, doth not make void the magistrate's just and legal authority, nor free the people from their due obedience to him; from which ecclesiastical persons are not exempted . . ." (Ch. XXV, par. 4).
>
> "The power which Christ has given his Church is wholly moral and spiritual, and constitutes the Church a kingdom and government, distinct from the civil commonwealth . . ." (Ch. 1, par. 1-2).

The Petitioners advert to the failure of the Respondents to appeal the action of the Administrative Commission of the Savannah Presbytery. Why this was not done must be obvious to this Court. The answer is conclusively found in the relationship of the Respondents to the presbytery at the time the commission acted and the significance of that action.

At the time that the commission responded by its resolution, dated May 19, 1966, the jurisdictional cord had been cut. The Respondents had disaffiliated. This, they had the right to do under the First Amendment and the constitution of the Petitioner Church. The constitution contains no prohibition against a local church severing. Having exercised the right to disaffiliate, no appeal was necessary.

However, as the Petitioners have focused attention upon the commission's action, the Respondents ask that it be appraised. If this is done, its pallidness will be exposed. It was innocuous; it dissolved nothing. It was impotent; it removed no member from the roll. It had the sterile effect of removing the pastor and the elders who had renounced their ties, previously. Why the commission did not take more aggressive action, which it could have under the Book of Church Order, is an enigma. Perhaps the answer is found in Chapter 6-3 of the Book of Church Order which provides:

> "If a church is dissolved by the Presbytery or otherwise ceases to exist, and no disposition has been made of its property, those who hold the title to the property shall deliver, convey and transfer to the Presbytery of which the church was a member, or to the authorized agents of the Presbytery, all property of the Church. . ."

Neither of the contingencies provided for in the above chapter were present, by action of the commission or circumstance of the church. The commission did not dissolve the church. The church had not ceased to exist. What, then, was the significance of the action of the commission? At best it sought to replace the pastor and elders. This constituted a recognition of the remaining congregation as a viable church body. It became the identity recognized as the continuing organization of the Respondent Church.

The dilemma created by the harmless action of the commission, was the precursor of subsequent deficiencies manifested in the Petitioners' pleading and presentation of their case.

VII

The Wall of Separation Is Not So Impregnable That a Denominational Church Is Not Subject to Reasonable Restraints upon the Liberties Guaranteed by the First Amendment

Since *Watson* v. *Jones,* supra, this Court has declared with unwavering consistency that temporal, governmental institutions must be free from religious interference. By so doing, it has affirmed the heritage of the separation of church and state conceived by the architects of the Constitution. Abuses of a state dominated by the church or a state in which one church was preferred were still fresh in their minds when they convened at Philadelphia in 1787.

What was declared in *Watson*[22] was amplified in *Reynolds* v. *United States,* 98 U.S. 145, 166, 167 (1879).

[22]"The structure of our government has, for the preservation of civil liberty, rescued the temporal institutions from religious interference . . ." 80 (13 Wall.) U.S. at 677).

This Court stated:

> "Can a man excuse his practices to the contrary because of his religious belief? To permit this would be to make the professed doctrines of religious belief superior to the law of the land, and in effect to permit every citizen to become a law unto himself. Government could exist only in name under such circumstances."

Keenly sensitive to any conduct inimical to the peace and good order of society, this Court since 1963[23], has voiced its condemnation of those who seek to subvert the integrity of government from the sanctuary of the First Amendment.

Mr. Justice Frankfurter projected the evil of elective respect for the law, 'If one man can be allowed to determine for himself what is the law, every man can. That means first chaos, then tyranny."

The First Amendment does not grant to anyone or any group the right to determine the bounds of freedom. Of necessity, these must be delimited by government. Mr. Justice Jackson drew the line when he said:

> "Civil government cannot let any group ride rough-shod over others simply because their 'consciences' tell them to do so."[24]

Almost a century prior to *Watson*, Alexander Hamilton declaimed why government can not compromise with conscience: "Government implies the power of making laws. It is essential to the idea of a law that it be attended with sanction. . ."[25]

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[23] *Cox* v. *Louisiana*, 379 U.S. 559 (1965), *Brown* v. *Louisiana*, 383 U.S. 131 (1966) (Mr. Justice Black's dissent), *Adderley* v. *Florida*, 385 U.S. 39 (1966).

[24] *Douglas* v. *City of Jeannette*, 319 U.S. 157, 179 (1943).

[25] *The Federalist*, No. 15 (Hamilton).

Civil disobedience affirmed and reaffirmed by the Petitioner Church is destructive of the law. Like the siren's call, it beckons to those dissidents who believe that the end justifies the means. They say, "The law be damned." The Honorable Edwin N. Griswold, Solicitor General of the United States, summed it up when he said:

> "The crucial attribute of civil disobedience is that it is expressed through deliberate violation of the law."[26]

Finding that the Petitioner Church had violated its constitution, the Supreme Court of Georgia asserted:

> "The General Assembly's endorsement of civil disobedience, which would allow a citizen to decide whether or not he will obey the law, is a radical venture into civil affairs. It is absolute defiance of law and order and is the road to anarchy."

This ominous prophecy is consonant with the historical philosophy of this Court. Through the years adherence to liberty under the law has emanated from this Bench in the written and spoken word. "We also reaffirm the repeated decisions of this Court that there is no place for violence in a democratic society dedicated to liberty under the law."[27]

This Court's position on civil disobedience affirms Mr. Justice Roberts' conceptual analysis of the First Amendment, "Thus the Amendment embraces two concepts—freedom to believe and freedom to act. The first is absolute but, in the nature of things, the second can not be. Conduct remains subject to regulation for the protection of society."[28]

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[26]*Dissent—1968*, Tulane Law Review, Vol. XLII, No. 4, pp. 726-739 (June, 1968).

[27]*Cox* v. *Louisiana*, 379 U.S. 559, 574 (1965) (Mr. Justice Goldberg).

[28]*Cantwell* v. *Connecticut*, 310 U.S. 296, 303-304 (1940) (Mr. Justice Roberts).

Now this Court is confronted with an issue which requires that it reassert its position condemning religious interference which has breached the separating wall. If this Court should ignore the gravity of this assault, the delicate balance will be destroyed, and the wall of separation irreparably breached. But more, however this Court may phrase its decision, it will be interpreted as countenancing civil disobedience.[29]

There is a "clear and present danger". The pronouncements on civil disobedience have created an atmosphere of disrespect for the law which has spawned a maelstrom of violence.

The brutal terror that convulsed France in 1792 and 1793 could be experienced here. The lengthening corridor of time still reverberates to the anguished outcry of that era, "Liberty, what crimes are committed in thy name."

If the restraint of the law is removed from ecclesiastical institutions, a fatal blow will have been delivered to the concept of government conceived by our forefathers. For surely, as feared, ours will become a government of men, and not of laws. The anarchy prophesied by the Supreme Court of Georgia will be followed by tyranny. History affirms.

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[29]"For the Court to place its imprimatur upon it (influence the administration of justice) is a misfortune that those that love the law will always regret", *Cox* v. *Louisiana*, 379 U.S. at 589 (1965) (Mr. Justice Clark's dissent).

REBUTTAL

If it were not for the sophistical reasoning, neither time nor space would be used in replying to the Petitioners' assertion that the effect of the ruling of the Supreme Court of Georgia was to freeze the doctrine of the Petitioner Church and destroy its self-government. This argument may be found at pages 19 and 20 of the Petitioners' brief.

As emphasized previously, the Petitioner Church, and any in its class, can advocate, embrace, and practice whatever it wishes, within the confines of its constitution. Too, it may alter its dogma and discipline at any time. The only limitation is the constitutional process. If those churches in the representative class wish to advocate civil disobedience free of ecclesiastical prohibition, they may remove the restraint.

The Petitioners' conclusion that the action of the Supreme Court of Georgia has forced a particular religious doctrine on all affiliated with the Presbyterian Church is preposterous. A plea of this kind can only evoke tolerant amazement. It would have been revealing if the Petitioners had identified one Presbyterian who had experienced what they contend. The fact is the General Assembly of the Petitioner Church could not have cared less. It reiterated its approval of civil disobedience at its 1968[30] convention.

The argument that the Georgia decision would freeze the faith of other hierarchical churches, and therefore, one who wishes to practice civil disobedience would have no place to go unless the church constitution condoned, certainly depicts a frustrated soul. He can be seen running from church to church desperately pounding on the outer door seeking admission. He will find a sanctuary. Odds are

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[30]This action was taken approximately five months after the decision of the Supreme Court of Georgia.

that those religious institutions which have countenanced, encouraged, or participated in civil disobedience will have their doors open.

Contrary to what the Petitioners picture—a frozen faith and a frustrated follower—affirmation by this Court of the decision of the Supreme Court of Georgia, will have a salubrious and chastening effect upon all churches in the representative and hierarchical classes. It will put them on notice that a church constitution is a compact between the highest church court and the lowest congregation. It is for the protection of the majority and minority alike. It must be respected.

There was nothing in the decision of the Supreme Court of Georgia which held that dogma and discipline are not subject to change. The Petitioners' observation to the contrary is without justification. In effect, that Court said, "Abide by your constitution or amend[81] it."

CONCLUSION

The Supreme Court of Georgia found that the Petitioner Church, through its General Assembly, had violated the Book of Church Order and Confession of Faith. By this decision, it upheld the discipline and dogma of the church which declared that the church was a spiritual body distinct from the commonwealth.

Should this Court yield to the argument of the Petitioners and find that the Supreme Court of Georgia by its decision offended the First Amendment, it would be in the position of establishing a religious discipline and dogma

[81]The Confession of Faith and the Book of Church Order can be amended by the advice and consent of the Presbyteries. To amend the Confession of Faith requires a three-fourths preference. To amend the Book of Church Order requires a concurrence of a majority. (Book of Church Order, Ch. XXX, par. 1-2) (R. 711 et seq.)

which would negate that unequivocally declared in the existing church constitution.

A reversal by this Court would nullify those sections of the Book of Church Order and Confession of Faith which proclaim with evangelical spirit that the mission of the Petitioner Church is spiritual and not temporal. A reversal by this Court would place it in the paradoxical position of asserting that the Petitioners' constitution was not the discipline and dogma of the Petitioner Church on April 17, 1966, when the Respondents severed.

Of more calamitous effect, a reversal by this Court would place its judicial blessings upon the constitutional transgressions of the Petitioner Church.

> *"Let reverence for the law . . . be taught in the schools, in the seminaries, and in the colleges. Let it be written in primers, in spelling books, and almanacs. Let it be preached from the pulpit, proclaimed in legislative halls, and enforced in courts of justice; and in short, let it become the political religion of the Nation."*
>
> Abraham Lincoln

Respondents respectfully submit that the Judgment of the Supreme Court of Georgia should be affirmed.

Respectfully submitted,

OWEN H. PAGE
Attorney for Respondents, Eastern Heights Presbyterian Church, et al.

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Savannah, Georgia 31401

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In The
Supreme Court of the United States

OCTOBER TERM, 1968

PRESBYTERIAN CHURCH IN THE UNITED STATES and J. LEHMON BRANTLEY, Chairman of the Administrative Commission of the Presbytery of Savannah, *Petitioners,*

vs.

MARY ELIZABETH BLUE HULL MEMORIAL PRESBYTERIAN CHURCH, *Respondent,*

AND

PRESBYTERIAN CHURCH IN THE UNITED STATES and J. LEHMON BRANTLEY, Chairman of the Administrative Commission of the Presbytery of Savannah, *Petitioners,*

vs.

EASTERN HEIGHTS PRESBYTERIAN CHURCH and FRANK L. PERRY, SR., JOHN BRUNING, LESTER R. SARGENT, HARDIN C. NORMAN and ARMIN S. HUBERT, Trustees, *Respondents.*

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF GEORGIA

~~MOTION FOR LEAVE TO FILE~~ BRIEF AMICI CURIAE IN BEHALF OF RESPONDENTS WITH BRIEF AMICI CURIAE ATTACHED

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THE ARGUS PRESS — SEATTLE, WASHINGTON

With the consent of all counsel, the Laurelhurst Presbyterian Church, Inc., a non-profit Washington corporation, its pastor, James R. Rohrbaugh, Allen Prier, Chairman of the Board of Trustees and representing all other Trustees similarly situated, and Ralph Schreiner, R. W. Sprague, S. R. Hansen, C. W. Gibbs, R. T. Downs, Jerry Journey, Earl R. McMillan, Frank Johnson, Karl House, Arnold J. Carlson, Dr. Doo Soo Suh, Phil Gallaher, Dr. Kirk Douglas, Glen Carson and Ewart Suffel, being the Elders and members of the Session and some of the withdrawing members of the Laurelhurst Church and representing all others similarly situated, hereby respectfully move for leave to file a brief *amici curiae* in this case in support of the respondents.

The consent of counsel for respondents and of counsel for the petitioners to file a brief *amici curiae* in behalf of the respondents has been obtained.

The movant, Laurelhurst United Presbyterian Church, Inc., defendant in the cause mentioned below, is a non-profit corporation in the State of Washington which holds legal title and has possession of real property and personalty, used by the congregation of the Laurelhurst United Presbyterian Church in Seattle, Washington (hereinafter referred to as the Laurelhurst Church). The individual movants, also defendants in the same case, are connected with the Laurelhurst Church in various official capacities.

All of said movants are defendants in an action in the Superior Court of the State of Washington for King County No. 691249 wherein the plaintiffs, Presbytery of Seattle, Inc., a non-profit Washington corporation, and William H. Goleeke, a member of the Laurelhurst United Presbyterian Church, represent-

ing all others similarly situated, seek to obtain legal title and possession of said realty and personalty now in the possession of the movants and which legal title to said realty and personalty is held by the movant Laurelhurst Church.

The movants are defending on the ground that the 1967 Confession of the United Presbyterian Church in the U.S.A. has effected substantial changes of doctrine in that church — changes to which the movants strongly object and which causes them to claim that the Presbytery of Seattle, Inc., representing the national body above, is not entitled to possession of the Laurelhurst Church property.

The case has been tried in the Superior Court of the State of Washington in Seattle and is now under advisement by the trial judge, the Honorable William J. Wilkins, who has informed Counsel that he will withhold decision until the Supreme Court of the United States rules in the instant case.

The movants are directly interested in the instant case before the United States Supreme Court because the petition for certiorari granted herein raises First Amendment and Fourteenth Amendment constitutional questions, also raised in the Seattle case mentioned above, involving the relationship between courts in the various jurisdictions in the United States and the property rights of members of religious societies. Since the Seattle trial judge in the local action wherein the movants are defendants has stated that he will withhold his decision pending the outcome in the instant case before this court, the movants have a special and direct interest in the application of the First and Fourteenth Amendments in the dispute now pending in the Seattle Superior Court.

The movants' dispute with the national body of the United Presbyterian Church in the U.S.A. will add a necessary dimension to the issues before this court. Instead of concern over the involvement of churches in secular events, as the petitioners herein suggest is the crux of their dispute, the movants are essentially concerned with the effect of fundamental and important changes in religious doctrine effected by the 1967 Confession of the United Presbyterian Church in the U.S.A. on the rights to property owned and possessed by the defendant congregation. This is an important and far-reaching question for religious societies affecting many churches situated similarly to the Laurelhurst Church, particularly in light of the ecumenical movement in the United States involving many religious denominations.

Movants have knowledge that many other congregations affiliated with the United Presbyterian Church in the U.S.A. take the same position as that taken by the Laurelhurst Church.

The movants believe that they can demonstrate that it is not a violation of the First Amendment freedom of religion and Fourteenth Amendment right of due process for courts to determine the rights of ownership, control and use of property held by religious societies where there have been clearly demonstrated, even admitted, changes in fundamental doctrine.

JURISDICTONAL QUERY

Parenthetically, we are unable to find that the Supreme Court of Georgia ruled on a federal question so as to give this court jurisdiction within the rule of the following cases:

In *McMillen v. Ferrum Mining Co.*, 197 U.S. 343, 347 (1905), this court said,

> ...This is obviously too late unless the court grants the rehearing and then proceeds to consider the question.

To the same effect:

Disconto Gesellschaft v. Umbreit, 208 U.S. 570 (1908);

Forbes v. State Council, 216 U.S. 396 (1910);

Paraiso v. U.S., 207 U.S. 368 (1907).

The main Georgia opinion does not pass on any federal question. Then there was merely a denial of a petition for rehearing and all questions raised therein. The rehearing was not *granted* as required by this court's decisions; and a federal question was not thereafter specifically considered and ruled on.

So it would appear the writ in this case was improvidently granted.

But if this court nevertheless takes jurisdiction, we direct attention to the attached Brief *Amici Curiae*.

WHEREFORE, it is respectfully prayed that this motion for leave to file a brief *amici curiae* be granted.

.....

ALFRED J. SCHWEPPE
Attorney for the Movants.

657 Colman Building
Seattle, Washington 98104

No. 71

In The
Supreme Court of the United States

OCTOBER TERM, 1968

PRESBYTERIAN CHURCH IN THE UNITED STATES and J. LEHMON BRANTLEY, Chairman of the Administrative Commission of the Presbytery of Savannah, *Petitioners,*

vs.

MARY ELIZABETH BLUE HULL MEMORIAL PRESBYTERIAN CHURCH, *Respondent,*

AND

PRESBYTERIAN CHURCH IN THE UNITED STATES and J. LEHMON BRANTLEY, Chairman of the Administrative Commission of the Presbytery of Savannah, *Petitioners,*

vs.

EASTERN HEIGHTS PRESBYTERIAN CHURCH and FRANK L. PERRY, SR., JOHN BRUNING, LESTER R. SARGENT, HARDIN C. NORMAN and ARMIN S. HUBERT, Trustees, *Respondents.*

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF GEORGIA

BRIEF AMICI CURIAE
ON BEHALF OF RESPONDENTS

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THE ARGUS PRESS SEATTLE, WASHINGTON

INTEREST OF AMICI CURIAE

As stated in the preceding motion, *the amici curiae* are all defendants in an action brought by the Presbystery of Seattle, Inc., a regional unit of the United Presbyterian Church in the U.S.A., to oust them from title and possession of the realty and personalty constituting the Laurelhurst United Presbyterian Church in Seattle. The congregation of the Laurelhurst Church in the fall of 1967 voted 183 to 11 to reject the doctrinal changes made in the historic presbyterian faith by the Confession of 1967 adopted by the General Assembly of the United Presbyterian Church in the U.S.A. in June of 1967, and voted to withdraw from the national body.

The three basic presbyterian documents for centuries have been: The Westminster Confession, the Larger Catechism and the Shorter Catechism.

The primary objections of the Laurelhurst Church to this new confession were the elimination of the Larger Catechism, the inclusion of other doctrinal statements not heretofore accepted, the change from a confessional to a non-confessional church, and changing the belief in the Bible as the Word of God to accepting the Bible as the inspired writings of men. The changes accomplished by the Confession of 1967 are fundamental changes, both demonstrable and in part admitted, in the historic belief and doctrine of the presbyterian faith.

Title to the property involved is held by a corporation, Laurelhurst United Presbyterian Church, Inc. The Articles of Incorporation state that property acquired is to be held for the object and purpose of the worship of Almighty God and to cause to be preached

and propagated the Gospel of Jesus Christ and the teachings of the Holy Spirit and particularly the belief and practice adhered to by the denomination known as the United Presbyterian Church of North America.

The United Presbyterian Church of North America merged in 1958 with the Presbyterian Church in the U.S.A. to form the United Presbyterian Church in the U.S.A., which at that time also adhered to the three basic presbyterian confessional documents.

A schism has occurred. The national body of the church has changed and in doing so has moved away from the historic and fundamental doctrines of the presbyterian faith. The *amici curiae* want to maintain their presbyterian faith in its historic form and retain the property they have heretofore used for this purpose, and which is dedicated to and held in trust for that purpose.

The action wherein the *amici curiae* are defendants was tried to the court who has taken the case under advisement. The Seattle trial judge informed counsel that he would await the outcome of the instant matter before making a ruling in the action before him. The *amici curiae* have an interest in the instant matter as they are similarly situated as the respondents herein and the outcome of the action that the *amici curiae* are defendants in may well be conclusively decided by the outcome of the instant action.

ARGUMENT

I. COURTS CAN ADJUDICATE PROPERTY RIGHTS OF RELIGIOUS SOCIETIES WHERE THERE HAS BEEN A CHANGE OF DOCTRINE.

Courts can adjudicate property rights of religious societies where there has been a change of doctrine. This principle is very old and has sanction in English decisions. *Attorney General v. Pearson,* 3 Merivale 353 (1817). This principle has also been recognized by this court in regards to property held in trust for the benefit of religious beliefs. *Watson v. Jones,* 13 Wall. 679 (1871).

This rule of law has also gained recognition and acceptance in a number of state courts. *Davis v. Scher,* 356 Mich. 291, 97 N.W. 2d 137 (1959); *Blauert v. Schupmann,* 241 Minn. 428, 63 N.W. 2d 578 (1954); 15 ALR 3d 297, 301.

In *Mills v. Yount,* Mo. „ 393 S.W. 2d 96, 100, 101 (1965), the Missouri court expressed several basic reasons for the rule. It said,

> But while the supreme judiciary of an organization has been said to be both legislative and judicial in respect to doctrinal matters within the basic faith of the church, we do not assent to the proposition that it can sit in solemn judgment to the exclusion of the civil courts as to its own acts (as affects civil and property rights), the effect of which such acts are a departure from the essential denominational faith, and a diversion to another, different, and repugnant one, and by this means carry the property of one faith over to the

other. See 45 Am. Jur. Religious Societies, § 68, p. 779; *Mt. Zion Baptist Church v. Whitmore,* 83 Iowa 138, 49 N.W. 81, 85, 13 L.R.A. 198; *Smith v. Pedigo, supra,* 145 Ind. 361, 44 N.E. 363, 366. For the right to religious freedom is not the right to steal churches. *Schnorr's Appeal,* 67 Penn. 138, 5 Am. Rep. 415, 418.

In *Trustees of Pencader Presbyterian Church v. Gibson,* 26 D. Ch. 375, 22 A. 2d 782, 789 (1941), after citing *Watson v. Jones,* 13 Wall. 679 (1891), the court said,

> And it may well be that the civil courts will interfere in a case where it is shown that the controlling authority of a General Church has indisputably abandoned fundamental and characteristic doctrines and beliefs to the diversion of church property from the objects and purposes of the implied trust to which it is subject. *Mack v. Kime,* 129 Ga. 1, 58 S.E. 184, 24 L.R.A., N.S., 675, 23 R.C.L., 449....

This is exactly the Seattle case.

II. ADJUDICATION OF PROPERTY RIGHTS DOES NOT VIOLATE THE FIRST OR FOURTEENTH AMENDMENTS

The adjudication of property rights by courts in the case of a change of doctrine does not in any way conflict with the First and Fourteenth Amendment rights of religious freedom. Property held by doctrinally oriented religious societies is held in trust either expressly or impliedly for the benefit of specific religious doctrines. A court determination of rights to property decides only those certain property rights. Such a determination does not decide who is right or wrong in their religious beliefs nor does it interfere

with the beliefs of anyone. Although ecclesiastical doctrine and belief must be presented in a determination of property rights where there is an allegation of a change in doctrine, it is introduced as evidence on the factual issue of whether a change in doctrine has in fact occurred.

This court has recognized an important distinction between the holding of religious beliefs and taking action motivated by religious beliefs. Under the First and Fourteenth Amendments there is absolute prohibition on state interference with religious beliefs or non-beliefs. *Braunfeld v. Brown,* 366 U.S. 599, 603 (1960). The Constitution requires that governmental action be "neutral in its relations with groups of religious believers and non-believers." *Everson v. Board of Education,* 330 U.S. 1 (1947); *Abington School District v. Schempp,* 374 U.S. 203 (1962). Such neutrality does not mean the state cannot act when there is just and proper cause for its action as between different groups of believers.

This court stated in *Braunfeld v. Brown,* 366 U.S. 599, 603 (1960):

> The freedom to act, even when the action is in accord with one's religious convictions, is not totally free from legislative restrictions. *Cantwell v. Connecticut, supra,* at pp. 303-304, 306. As pointed out in *Reynolds v. United States, supra,* at p. 164, legislative power over mere opinion is forbidden but it may reach people's actions when they are found to be in violation of important social duties or subversive of good order, even when the actions are demanded by one's religion. This was articulated by Thomas Jefferson when he said:
>
> Believing with you that religion is a matter

> which lies solely between man and his God, that he owes account to none other for his faith or his worship, that *the legislative powers of government reach actions only, and not opinions,* I contemplate with sovereign reverence that act of the whole American people which declared that their legislature should "make no law respecting an establishment of religion, or prohibiting the free exercise thereof," thus building a wall of separation between church and State. Adhering to this expression of the supreme will of the nation in behalf of the rights of conscience, I shall see with sincere satisfaction the progress of those sentiments which tend to restore to man all his natural rights, convinced *he has no natural right in opposition to his social duties.* (Emphasis added.) 8 Works of Thomas Jefferson 113.

> And, in the *Barnette* case, the Court was careful to point out that "The freedom asserted by these appellees does not bring them into collision with rights asserted by any other individual. It is such conflicts which most frequently require intervention of the State to determine where the rights of one end and those of another begin. . . .

See *American Communications Ass'n. v. Douds,* 339 U.S. 382, 408 (1949) for further recognition by this court between holding beliefs and acting with regard to those beliefs.

In this case the freedom asserted by the petitioners brings them into conflict with the rights of others. The religious freedom asserted by the petitioners does not give them license to ignore the property rights of those who disagree with them, nor can the right of religious freedom be used as a barrier to a judicial determination of those rights.

CONCLUSION

The logical progression of petitioners' position would be for the courts to take no part whatsoever in religious property disputes, leaving those in actual control of the property all rights to the property, with no state action through its courts permissible to aid either party.

The *amici curiae* assert that when there is a clearly demonstrable and visible change in historic doctrines and beliefs perpetrated by the national body of the church, it no longer has a rightful claim to property held for and in behalf of those historic doctrines and beliefs. In the Seattle case the national body which has deliberately instituted substantial changes, both demonstrable and visible, nevertheless seeks to obtain the Laurelhurst church property. In this case the Laurelhurst church in Seattle is a defendant in possession.

If the courts cannot adjudicate religious property disputes, the law will leave the parties where it finds them. If the courts do have such a right, it would seem a necessary consequence that they can determine who shall have the property where there has been a substantial change of doctrine by a national church body.

Respectfully submitted,

.....

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CERTIFICATE OF SERVICE

I, Alfred J. Schweppe, attorney for the above mentioned *amici curiae,* certify that I have this day served

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and

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and

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attorneys for the respondents in the foregoing matter, representing all the parties that are required to be served, each with a copy of this Motion for Leave to File a Brief Amici Curiae and a copy of the attached Brief Amici Curiae by depositing in the United States mail copies of same in properly addressed envelopes with adequate postage thereon.

Done this.....day of September, 1968.

.....

ALFRED J. SCHWEPPE
Attorney for Amici Curiae.

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Seattle, Washington 98104

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In the

Supreme Court of the United States

OCTOBER TERM, 1968

No. 71

PRESBYTERIAN CHURCH IN THE UNITED STATES, ET AL.,
Petitioners,

VS.

MARY ELIZABETH BLUE HULL MEMORIAL PRESBYTERIAN CHURCH,
Respondent.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF GEORGIA

MOTION OF W. J. WILLIAMSON, SECRETARY OF CONCERNED PRESBYTERIANS, INC., FOR LEAVE TO FILE A BRIEF AMICUS CURIAE

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ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF GEORGIA

MOTION OF W. J. WILLIAMSON, SECRETARY OF CONCERNED PRESBYTERIANS, INC., FOR LEAVE TO FILE A BRIEF AMICUS CURIAE

W. J. Williamson, as a member of Presbyterian Church in the United States and as Secretary of Concerned Presby-

terians, Inc., respectfully moves for leave to file the attached brief amicus curiae in support of the Respondents in the above styled cause. Consent has been requested by letter to all counsel for all parties on August 9, 1968. Consent has been received from one of the counsel for one of the parties; but no consent has been received from the other counsel so movant avers that such consent has been refused.

W. J. Williamson is a Ruling Elder in The First Presbyterian Church of Greenville, Alabama, which is one of the member churches of the Presbyterian Church in The United States, one of the Petitioners in this cause. W. J. Williamson is the Secretary of Concerned Presbyterians, Inc. This organization is a non profit, religious corporation organized and existing under the laws of The State of Georgia. It is a voluntary organization comprised principally of laymen of The Presbyterian Church in The United States. It was organized in 1964 and has its administrative headquarters in Miami, Florida. It employs a staff and a full time field director. It has a budget of $100,000.00 per year and mails a regular printed bulletin to over 50,000 interested people. This organization arose because of great concern among the people in the pew toward the trends in The Presbyterian Church in The United States which many felt violated the Constitution of the Church. This organization has as its published primary goal and aim to return the Presbyterian Church in The United States to its primary mission of winning lost souls to Jesus Christ and nurturing them in the faith. These laymen feel that The Presbyterian Church in the United States has become so involved in social, economic and political matters in flagrant violation of its Constitu-

tion that an organized effort must be made to return it to its primary mission as aforesaid.

Involved in this litigation are two Presbyterian Churches and the parent ecclesiastical body of the church of which movant is a member. There are over 4000 churches in The Presbyterian Church in the United States. Lay members in many of these churches are also members of Concerned Presbyterians, Inc. They feel that this decision will vitally affect the future ownership and control of their local church property. The officials of Presbyterian Church in The United States undertook this litigation without the advice and consent of any court of the church or the membership thereof. Many feel that those in ecclesiastical control of The Presbyterian Church in The United States do not represent the vast majority of the people in the pew. Movant has read the Brief of Petitioner Church and feels that it does not fully or completely state the constitutional position of said church nor the application of the existing law to the ownership of property by local congregations therein. Therefore, movant submits that because of the vital interest of thousands of members in the Petitioner Church in the matters to be considered in this case by this Honorable Court, that movant should be permitted to point up the particular historic position of Petitioner Church toward the local ownership and control of its church property. Movant desires to file the attached brief in order to bring these matters to the attention of the Court since movant believes that their consideration is essential to a full presentation of the constitutional issues involved in this case.

WHEREFORE, it is respectfully requested that this Motion for Leave to File a Brief amicus curiae be granted

and the views expressed in that brief be considered by this Court.

Respectfully submitted,

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In the

Supreme Court of the United States

OCTOBER TERM, 1968

No. 71

PRESBYTERIAN CHURCH IN THE UNITED STATES, ET AL.,
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vs.

MARY ELIZABETH BLUE HULL MEMORIAL PRESBYTERIAN CHURCH,
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ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF GEORGIA

BRIEF OF W. J. WILLIAMSON, SECRETARY OF CONCERNED PRESBYTERIANS, INC., AMICUS CURIAE, IN SUPPORT OF RESPONDENT

THE STATUS OF AMICI CURIAE

The members of Concerned Presbyterians, Inc., who are lay members of churches in The Presbyterian Church in The United States, represent the deep interest of the people in the pew in this case before the Court. They are in

accord with the Respondents in this case and consider it important to the health of their local churches that this Court sustain the decision of the Supreme Court of Georgia.

This amicus curiae does not intend to argue all the matters which can be reasonably anticipated to be fully argued in the briefs for the Respondents; but it is intended to argue here matters of vital interest to these many local churches in The Presbyterian Church in The United States.

ARGUMENT

Rather than submit a lengthy brief upon the facts and the law, this amicus curiae joins in all that is stated in the brief by the Respondents adding only the following few points and arguments.

This amicus curiae is vitally interested in the decision of this Court because of the approximate 1,000,000 members of the Presbyterian Church in the United States whose church property will be affected thereby.

Ecclesiastical law tends to be archaically and voluminously articulated; and it is most often characteristically obscure, replete with unfathomable vagaries. In 1952 the Supreme Court, in the landmark decision of *Kedroff* v. *St. Nicholas Cathedral*, 344 U.S. 94, introduced new constitutional dimensions into this area of the law. Although this litigation dragged on to the *Kreshik* v. *St. Nicholas Cathedral*, 363 U.S. 190, decision of 1960, these various constitutional problems have yet to be successfully resolved. The old case of *Watson* v. *Jones*, 80 U.S. (13 Wall.) 679 (1871) had been modified through the years; but now since these questions have been raised and not answered, an area of church law, which was becoming relatively clear and set-

tled, has become shrouded in uncertainty. It desperately needs clarification. The instant cases offer the facts on which such clarification can be made. We suggest that these facts and this law raises three pertinent questions:

(1) What criteria of ownership are relevant in settlement of church property disputes?

(2) How can civil courts, at the same time, deal with church property disputes and avoid involvement in theological controversies?

(3) To what extent do the constitutional guarantee of freedom of exercise of religion and its correlative prohibition of an establishment of religion impinge upon the various methods courts can use to settle these disputes?

In answer to these questions, this amicus curiae suggests the following propositions, to wit:

I. When Church Property Rights Are in Dispute, Civil Courts Must Determine Criteria of Ownership and Rights of Peaceful Possession.

Property rights are among the most cherished human rights in our Republic. The various states have vested interests in the orderly control of the ownership, possession and disposition of property within their borders. In the establishment of criteria for determining ownership and rights of peaceful possession of church property, these are suggested:

(a) Right of appointment of clergy to given churches.

(b) Right to determine membership in the congregation.

(c) Right to administer church finances and prescribe discipline.

(d) Right to prescribe control and use.

In the case at bar each of these criteria of ownership and possession rested in the local Respondent churches and not in any higher judicatory.

The right of appointment of the clergy in the Presbyterian Church in the United States rests solely in the local congregation. This is evident from Paragraph 26-1[1] of The Book of Church Order. Only a local congregation can call a minister; no superior church body or person can assign a minister to a local congregation. The local Nominating Committee must "confer" with Presbytery's Commission on the Minister and His Work; but such Commission has no control or veto over the call of a particular minister as its service is limited to "advice".

The right to determine membership is vested absolutely and exclusively in The Session of the Local Church.[2]

---

1. Book of Church Order: Paragraph 26-1.

A church which desires to elect a Pastor or an Associate Pastor shall proceed after the following manner:

The Church Session shall call a congregational meeting to convene at the regular place of worship to elect a Nominating Committee, representative of the whole congregation, whose duty shall be to nominate a Minister to the congregation for election to the desired pastoral relation. Public notice of the time, place, and purpose of the meeting shall be given at public worship at least one week prior to the time of the meeting.

The Nominating Committee shall promptly confer with the resbytery's Commission on the Minister and His Work. All names submitted to the Nominating Committee, with information as to the source of the suggestion, shall be referred to the Commission on the Minister and His Work for its advice.

When the Nominating Committee is ready to report, it shall so notify the Session, which shall call a congregational meeting at the regular place of worship for the purpose of acting on the report of the Committee. Public notice of the time, place, and purpose of the meeting shall be given at public worship at least one week prior to the time of the meeting.

2. Book of Church Order. Paragraph 7-1.

Communing members are those who have made a profession of faith in Christ, have been baptized, and have been admitted by the Session to the Lord's Table. They are entitled to all the rights and privileges of the Church, including the right to participate in the Sacrament of the Lord's Supper, the right to present children for Baptism, and the right to take part in meetings of the congregation of which they are members in good standing.

The right to administer finances and to prescribe discipline over members is vested exclusively in the local church. As to finances Paragraph 6-2 of The Book of Church Order provides that ". . . *all* funds collected for the support and expense of the church and for the benevolent purposes of the church shall be controlled and disbursed by the Session and the Board of Deacons as their relative authorities may from time to time be established and defined." No higher judicatory has any control over the finances of the local church; and no higher judicatory has any authority to make any assessment or demand for funds on the local church. Such judicatory can only "ask" not "assess or demand". An official pamphlet published by The General Council of the Presbyterian Church in the United States entitled "The Benevolence Program of the Presbyterian Church U. S." states the official position of the church in this language:

> "1. The individual both in the amount of his giving and in the particular cause to which his gift is directed is under Christian liberty. God alone is Lord of the conscience. . ." and,
>
> "The logic of the plan outlined in this paper, and the increasing pressure of present needs indicates that there is also a need for a uniform policy for all courts of the church. Such a policy must rest on the fundamental rights of Christian liberty for each contributor and contributing organization. This means that the equalization policy must allow for designation of contributions in any way the giver desires."

Thus it is clear that in the Presbyterian Church in the United States the local church has the exclusive control over its finances completely free of any denominational restrictions. This is also true with the right to prescribe discipline for individual members. Book of Church Order, Paragraph 104-1 provides:

"Original jurisdiction over church members, Ruling Elders and Deacons is in the Church Session of the church to which such members belong. . ."

Finally, as to the last criteria of ownership and possession, the right to prescribe control and use of the property is in the local congregation.[3] The local officers may buy, sell or mortgage the property without any approval or control from a higher judicatory. The only time that a higher judicatory has any claim to the property of a local congregation is when a church ceases to exist and the local congregation has failed to dispose of the property, the title shall be transferred to the Presbytery rather than let it escheat to the State. Both historically and constitutionally the Presbyterian Church in the United States has maintained a position of modified congregationalism as to local property and representative government as to spiritual and doctrinal matters.

---

3. Book of Church Order, Paragraph 6-2.

If a particular church is incorporated, the provisions of its charter and bylaws must always be in accord with the Constitution of the Presbyterian Church in the United States. If the congregation is an incorporated body, all the communing members on the active roll of that church shall be members of the corporation. The officers of the corporation, whether they be given the title "Trustee" or some other title, shall be elected from among the members of the corporation in a regularly constituted congregational meeting. The powers and duties of such officers must not infringe upon the powers and duties of the Session or of the Board of Deacons. All funds collected for the support and expense of the church and for the benevolent purposes of the church shall be controlled and disbursed by the Session and the Board of Deacons as their relative authorities may from time to time be established and defined. To the officers of the corporation may be given by the charter and bylaws of the corporation any or all of the following responsibilities: The buying, selling and mortgaging of the property for the church, the acquiring and conveying title to such property, the holding and defending title to the same, the managing of any permanent special funds entrusted to them for the furtherance of the purposes of the church, provided that such duties do not infringe upon the powers and duties of the Session or of the Board of Deacons. In buying, selling and mortgaging real property such officers shall act solely under the authority of the corporation, granted in a duly constituted meeting of the corporation.

Thus in the instant case the Georgia civil courts did properly determine this dispute over the real property of the local churches. Proper determinations were made as to these criteria of ownership and possession. All criteria clearly proved that ownership and right of possession was in the Respondent local churches.

II. Watson v. Jones Is Not Proper Basis for Absolute Judicial Abstention Where Such Would Be Offensive to Settled Public Policy, Harsh, Unfair or Otherwise Inconsonant with Traditional Equity Principles.

The Supreme Court of Georgia held in effect that judicial abstention is not absolute in property disputes in hierarchical churches. Petitioners contend that the only proper judicial review in hierarchical church cases is for the court to do no more than examine the credentials of the church judicatory to see whether in fact it represents the ultimate authority within the church; and if so, its decision binds the court. It is true that the third rule of *Watson* v. *Jones*, supra, puts forth a concept of very limited judicial review of the decisions of ecclesiastical judicatories. Many courts, since that decision, however, though recognizing its status as a leading case have been unwilling to recognize such unlimited power in the hands of church authorities. Courts have recognized considerable truth in Lord Acton's maxim that power corrupts and absolute power corrupts absolutely. The policy of complete deference to church tribunals was quickly eroded as the courts began to realize that the consent of an individual member to be governed may not have been unconditional. The courts began to demand from church tribunals some rudimentary notions of fairness and equity. The erosion began in 1872 in *Bouldin* v. *Alexander*, 82 U.S. (15 Wall.) 131, with an implication that the court would only defer

to a church tribunal which had followed its own procedural rules. This requirement of procedural regularity modifies the doctrine of *Watson* v. *Jones,* supra, by imposing traditional rules of equity on the church tribunals.

Beginning with the limitations expressed in *Bouldin* v. *Alexander,* supra, the federal courts since *Watson* v. *Jones,* supra, have examined church decisions, sometimes rather closely, to ensure that these decisions have been fair and just to disputing church members, within the context of church doctrine and procedures. *Brundage* v. *Deardorf,* 55 F. 839 (1893), for example, involved a dispute between two factions of the Church of United Brethren of Christ, a national hierarchical church, concerning a new declaration of faith and a new constitution which had been adopted by a majority vote at a regularly held church convention. Both warring factions claimed that the other had seceded, and each faction had established its own hierarchy, which it claimed to be the true governing authority of the church. After distinguishing *Watson* v. *Jones,* supra, on factual grounds, Judge Taft interpreted that case as laying down the proposition that

> "only a *bona fide* decision (by a church tribunal) of the fundamental law of the church must be recognized as conclusive by civil courts. Clearly, it was not the intention of the court to recognize as legitimate the revolutionary action of a majority of the supreme judicatory, in fraud of the rights of a minority seeking to maintain the integrity of the original compact."

The modification of *Watson* v. *Jones,* supra, by later case law is best summarized in Mr. Justice Brandeis' restatement of the *Watson* rule in *Gonzalez* v. *Archbishop,* 280 U.S. 1 (1929). Though the holding followed Justice Miller's opinion in giving effect to the ruling of the highest church authority the statement of the rule the courts were

to apply in church disputes significantly expanded Miller's original formulation:

> "In absence of fraud, collusion or arbitrariness, the decisions of the proper church tribunals on matters purely ecclesiastical, although affecting civil rights, are accepted in litigation before the secular courts as conclusive, because the parties in interest made them so by contract or otherwise."

Under this rule the role of the civil court includes an examination of the fairness of the church proceedings both to determine the good faith of the church authorities ("absence of fraud, collusion") and also to determine whether the church tribunal has blatantly disregarded its own rules ("or arbitrariness"). In sum, the line of cases culminating in *Gonzalez* v. *Archbishop* diluted the *Watson* principle of absolute deference to church authorities. Implicit in these cases was the concept that the consent of the members to be governed by the church authorities did not envision fraudulent, arbitrary, or collusive action by these authorities.

One of the more recent cases modifying the rigidity of the *Watson* v. *Jones,* supra, rule is the 1953 decision of *Romanian Orthodox Missionary Episcopate* v. *Trutza,* 205 F.2d 107. In this case the court looked into the methods by which the church functioned at its highest level. The court concluded that if such methods are proven to be harsh, unfair or inequitable, the court may and should look beyond the rigid rule formulated in *Watson* v. *Jones,* supra.

The court stated the principle in the 1966 case of *Serbian Eastern Orthodox Diocese* v. *Ocokoljich,* 219 N.E.2d 343, in this language:

> "Where the decision of the church tribunal is tainted with fraud, collusion or arbitrariness, the decision need not be accepted by the secular court. . . "

Thus it is quite clear that now *Watson* v. *Jones*, supra, does not offer a proper legal basis for absolute judicial abstention where such would be offensive to settled public policy, harsh, unfair or otherwise inconsonant with traditional equity principles. Hence the decision of the Supreme Court of Georgia was quite proper in that an issue was presented in this case for a jury to determine as to whether or not there had been a substantial abandonment or departure by the general church of its fundamental law or constitution. A church constitution is a contract, and it is the duty of the civil courts to construe and enforce these contracts just as they construe and enforce the charter provisions of a municipal corporation or of a voluntary association as a labor union. If ecclesiastical bodies in their legislative capacity commit unconstitutional acts, these acts are to be set aside, by the courts, and they may be compelled to observe and act under the constitution. This is the rule in municipal government and voluntary associations and is equally applicable to church government. It is quite true that civil courts have properly refrained from settling issues of doctrine for the law knows no dogma. But the issue in the case at bar is not a doctrinal dispute but a question of flagrant constitutional violation. The Petioner Church's constitution, in the Confession of Faith, Chapter XXXIII, paragraph 4, states very clearly:

> "Synods and councils are to handle or conclude nothing but that which is ecclesiastical; and are not to intermeddle with civil affairs which concern the commonwealth unless by way of humble petition in cases extra ordinary; or by way of advice by the civil magistrate."

The Respondent Churches claimed that the General Assembly of the Petitioner Church, as the highest judicatory of the church, had violated this provision of its constitution. The Respondent Churches gave evidence of the several violations. The jury was charged with the responsibil-

ity of determining if the alleged violations represented such a substantial departure from this constitution as to justify the Respondent Churches withdrawing and taking their local property with them. We think the jury was the proper decision-making body to make this determination. Petitioners contend that the General Assembly itself is the proper body to make such a determination, and such a decision is binding on the civil courts. Such a rule in this case would clearly be harsh, unfair and inequitable. For in such a case the General Assembly would be passing on the validity of its own actions. It would be both judge and jury. Under such a procedure, local churches and members would have absolutely no recourse to deliberate constitutional violations by the General Assembly. Where property rights and peaceful possession are at stake, the civil courts must intervene to determine constitutional regularity. And we think the test of "substantial abandonment or departure" propounded by the trial court is reasonable and just. It is rigid enough to deter frivolous litigation by any dissident member and flexible enough to give constitutional protection to those who consented to be governed thereby but feel aggrieved by alleged violations.

Further reason in this regard is given when the true nature is seen of the relationship between local churches and members to the General Assembly in the Petitioner Church. Justice Miller in *Watson* v. *Jones*, supra, set forth his now famous trichotomy of church disputes. Of course the third type is where "The ecclesiastical body holding the property is but a subordinate member of some general church organization in which there are superior ecclesiastical tribunals with a *general* and *ultimate* power of control more or less *complete* in some supreme judicatory over the whole membership of that general organization (emphasis supplied)." This rule conceives of a judicatory with *general* and *ultimate* power of control more or less com-

plete. The Petitioner Church does not fully fit into this category. The Roman Catholic, the Methodist, the Episcopal churches do so fit but not the Presbyterian Church in the United States. The General Assembly of the Petitioner Church does not have *general* and *ultimate* power of control, more or less complete, over local churches or local members.

The significance of the determinations made by the General Assembly of the Petitioner Church were defined at the assembly of 1880:

> "2. The judicial decisions of our courts differ from in these deliverances, in that the former determine, and when proceeding from our highest court, conclude a particular case; but both these kinds of decisions are alike interpretations of the Word by a church court, and both not only deserve high consideration, but both must be submitted to, unless contrary to the Constitution and the Word, as to which there is a right of private judgment belonging to every church court, and also to every individual church member." (A Digest to the Acts and Proceedings of the General Assembly of the Presbyterian Church in the United States—page 71).

From this official statement of the General Assembly, it is quite obvious that it, as the highest church court, does not have such general and ultimate power of control, more or less complete over local churches, as to fully conform its authority with Justice Miller's third category. We must then say that Petitioner Church is somewhere between the second and third categories of Justice Miller's trichotomy. It is somewhat congregational but not fully, and it is somewhat hierarchical but not fully. Therefore the modified rules of *Watson* v. *Jones*, supra, should be applied to the case at bar; and the civil court thus made proper inquiry into the alleged constitutional violations.

III. The Establishment Clause of the First Amendment Is to Protect the Church Against the State and the Free Exercise Clause Is to Protect the Individual Against the Church Hierarchy.

Petitioners argue that the First Amendment to the Constitution of The United States forbids civil courts to decide church disputes such as the case at bar. They seem to contend that the wall of separation of church and state is so high that a civil court cannot inquire into the actions of a judicatory of a hierarchical church. We believe this is to misinterpret the views and purposes of the drafters of this Amendment at the time of its adoption. We should like to examine the history of this Amendment for we believe it clearly shows that the Amendment was enacted not for the purpose of establishing a complete neutrality but solely to prevent any one sect or combination thereof from dominating the religious life of this country with the aid of the government.

The subject of religious freedom as well as the other civil rights was excluded from the Constitution itself. This was not an oversight nor an attempt to minimize its importance but simply a part of an intentional plan to eliminate all that was considered unnecessary. It was Madison's view that the Constitution as an instrument of delegated powers granted the federal government no power over religious matters so that a positive restriction would be unnecessary. But in his eyes the most important guarantee of religious freedom in America was the large number of religious denominations in this country which would keep any one of them from becoming dominant to the exclusion of the others.[4]

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4. "If there were a majority of one sect, a Bill of Rights would be a poor protection for liberty. Happily for the states, they enjoy the utmost freedom of religion. This freedom arises from that multiplicity of sects which pervades America." 5 Writings of James Madison (Hunt ed.) 176.

However, the colonists did not have the same trust and understanding of the Constitution, and they demanded more positive safeguards. To meet this demand, the colonists were promised a Bill of Rights to secure these freedoms. The first of these was religious liberty which was protected by the First Amendment: "Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof."[5]

A study of the various forms this Amendment took and the debates which surrounded its drafting and adoption are indicative of the intended purpose of the safeguard. The clause went through six states before finally being adopted:[6]

1. The civil rights of none shall be abridged on account of religious belief or worship, nor shall any *national* religion be established, nor shall the full and equal rights of conscience be in any manner, or on any pretexts, infringed. (Italics added)

2. No religion shall be established by law, nor shall the equal rights of conscience be infringed.

3. Congress shall make no laws touching religion, or infringing the rights of conscience.

4. Congress shall make no law establishing religion, or to prevent the free exercise thereof, or to infringe the rights of conscience.

5. Congress shall make no laws establishing articles of faith or a mode of worship or prohibiting the free exercise of religion

6. Congress shall make no laws respecting an establishment of religion or prohibiting the free exercise thereof.

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5. U. S. Constitutional Amendment I.

6. See 1 Annals of Congress 434-916 (1789).

A close reading of these versions makes a limited scope more apparent which is substantiated by Madison's own words:

> "Whether the words are necessary or not . . . they had been required by some of the State Conventions, who seemed to entertain an opinion that under the clause of the Constitution, which gave Congress power to make all laws necessary and proper to carry into execution the Constitution, and the laws made under it enabled them to make laws of such a nature as might infringe the rights of conscience, and establish a national religion; to prevent these effects . . . the Amendment was intended."[7]

During the debate on the versions in question someone suggested that the Amendment might be construed to favor those who believed in no religion at all. In reply Madison is reported as follows:

> "If the word 'national' was inserted before 'religion', it would satisfy the minds of the honorable gentlemen. He believed that the people feared that one sect might obtain a pre-eminence, or two combine together, and establish a religion to which they would compel others to conform. He thought that if the word 'national' was introduced it would point the amendment directly to the object it was intended to prevent."[8]

We need not rely on Madison's views alone. Sylvester of New York feared that the words of the final draft might be misconstrued so as to abolish religion completely. Gerry of Massachusetts thought a better statement would be to say that "no religious doctrine could be established by law". Carroll of Maryland favored the Amendment because he felt that dissenters, now displeased with the Constitution, might be won over by learning that no *one* religion could be established by Congress.[9]

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7. Id. at 730.
8. Id. at 731.
9. Id. at 729-731.

It thereby becomes apparent from the wording of the various drafts and the expressions of Madison and others at the time that the intended purpose of the First Amendment was to oppose the exclusive establishment of any one religious faith and not to require a complete divorce between government and religion.

It thus appears to us that the drafters of this First Amendment intended that the establishment clause would protect the church from undue interference by the State and that the free exercise clause would protect the individual from the church hierarchy. In the case at bar the Respondent Church members simply want the freedom to worship as they please in their own church property which they bought and paid for without outside interference. If the civil court were to refuse to hear their plea, the State would in effect be establishing a religion for the church hierarchy. Mr. Jefferson's "wall of separation" is just not that high. It certainly is not so high that it forbids inquiry into this claim that a hierarchical church has transgressed its own constitution thereby denying to its local members the freedom of religion they consented to choose in submitting thereto.

CONCLUSION

This Amicus Curiae submits that the judgments of the Supreme Court of Georgia should be affirmed.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, W. J. Williamson, movant, hereby certify that I have served a copy of the foregoing motion and attached brief by depositing a copy of the same in the United States mail, properly stamped and addressed to each of the following:

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This ..... day of September, 1968.

W. J. WILLIAMSON

SUPREME COURT OF THE UNITED STATES

No. 71.—October Term, 1968.

Presbyterian Church in the United States et al., Petitioners, v. Mary Elizabeth Blue Hull Memorial Presbyterian Church et al.	On Writ of Certiorari to the Supreme Court of Georgia.

[January 27, 1969.]

Mr. Justice Brennan delivered the opinion of the Court.

This is a church property dispute which arose when two local churches withdrew from a hierarchical general church organization. Under Georgia law the right to the property previously used by the local churches was made to turn on a civil court jury decision as to whether the general church abandoned or departed from the tenets of faith and practice it held at the time the local churches affiliated with it. The question presented is whether the restraints of the First Amendment, as applied to the States through the Fourteenth Amendment, permit a civil court to award church property on the basis of the interpretation and significance the civil court assigns to aspects of church doctrine.

Petitioner, Presbyterian Church in the United States, is an association of local Presbyterian churches governed by a hierarchical structure of tribunals which consists of, in ascending order, (1) the Church Session, composed of the Elders of the local church; (2) the Presbytery, composed of several churches in a geographical area; (3) the Synod, generally composed of all Presbyteries within a State; and (4) the General Assembly, the highest governing body.

A dispute arose between petitioner, the general church, and two local churches in Savannah, Georgia—the respondents, Hull Memorial Presbyterian Church and Eastern Heights Presbyterian Church—over control of the properties used until then by the local churches. In 1966, the membership of the local churches, in the belief that certain actions and pronouncements of the general church were violations of that organization's constitution and departures from the doctrine and practice in force at the time of affiliation,[1] voted to withdraw from the general church and to reconstitute the local churches as an autonomous Presbyterian organization. The ministers of the two churches renounced the general church's jurisdiction and authority over them, as did all but two of the ruling elders. In response, the general church, through the Presbytery of Savannah, established an Administrative Commission to seek a conciliation. The dissident local churchmen remained steadfast; consequently, the Commission acknowledged the withdrawal of the local leadership and proceeded to take over the local

[1] The opinion of the Supreme Court of Georgia summarizes the claimed violations and departures from petitioner's original tenets of faith and practice as including the following: "ordaining of women as ministers and ruling elders, making pronouncements and recommendations concerning civil, economic, social and political matters, giving support to the removal of Bible reading and prayers by children in the public schools, adopting certain Sunday School literature and teaching neo-orthodoxy alien to the Confession of Faith and Catechisms, as originally adopted by the general church, and causing all members to remain in the National Council of Churches of Christ and willingly accept its leadership which advocated named practices, such as subverting of parental authority, civil disobedience and intermeddling in civil affairs"; also, "that the general church has . . . made pronouncements in matters involving international issues such as the Vietnam conflict and has disseminated publications denying the Holy Trinity and violating the moral and ethical standards of the faith." 224 Ga., 61, 62–63, 159 S. E. 2d 690, 692 (1968).

churches' property on behalf of the general church until new local leadership could be appointed.

The local churchmen made no effort to appeal the Commission's action to higher church tribunals—the Synod of Georgia or the General Assembly. Instead, the churches filed separate suits in the Superior Court of Chatham County to enjoin the general church from trespassing on the disputed property, title to which was in the local churches. The cases were consolidated for trial. The general church moved to dismiss the actions and cross-claimed for injunctive relief in its own behalf on the ground that civil courts were without power to determine whether the general church had departed from its tenets of faith and practice. The motion to dismiss was denied, and the case was submitted to the jury on the theory that Georgia law implies a trust of local church property for the benefit of the general church on the sole condition that the general church adhere to its tenets of faith and practice existing at the time of affiliation by the local churches.[2] Thus, the jury was instructed to determine whether the actions of the general church "amount to a fundamental or substantial abandonment of the original tenets and doctrines of the [general church], so that the new tenets and doctrines are utterly variant from the purposes for which the [general church] was founded." The jury returned a verdict for the local churches, and the trial judge thereupon declared that the implied trust had terminated and enjoined the general church from interfering with the use of the property in question. The Supreme Court of Georgia

[2] This theory derives from principles fashioned by English courts. See, *e. g.*, *Craigdallie* v. *Aikman*, 1 Dow. 1, 3 Eng. Rep. 601 (H. L. 1813) (Scot.); *Attorney General ex rel. Mander* v. *Pearson*, 3 Mer. 353, 36 Eng. Rep. 135 (Ch. 1817). For the subsequent development of the implied trust theory in English courts, see, Judicial Intervention in Disputes Over the Use of Church Property, 75 Harv. L. Rev. 1142, 1148–1149 (1962).

affirmed, 224 Ga. 61, 159 S. E. 2d 690 (1968). We granted certiorari to consider the First Amendment questions raised.* 392 U. S. 903 (1968). We reverse.

*We reject the contention of respondent local churches that no First Amendment issues were raised or decided in the state courts. Petitioner's answer and cross-claim in each case included an express allegation that the action of respondents in appropriating the church property to their use was "in violation of the laws of Georgia, *the United States of America*, and the Southern Presbyterian Church." (Italics supplied.) At trial, petitioner's counsel objected to the admission of all testimony "pertaining to [the] alleged deviation from the faith and practice of the Presbyterian Church in the United States" because that question was "exclusively within the right of the Presbyterian Church in the United States through its proper judicial body to determine." On appeal, petitioner again contended "that questions of an ecclesiastical nature concerning whether or not a church has abandoned its tenents [*sic*] and doctrines, or some of them, are exclusively within the jurisdiction of the church courts and should not be submitted to a jury for determination as this would destroy the doctrine of separation of church and state." Petitioner thus clearly raised claims under the First Amendment as applied to the States by the Fourteenth Amendment. *Kedroff v. St. Nicholas Cathedral*, 344 U. S. 94, 116, 119 (1952). The Georgia Supreme Court considered and decided these claims. "In considering this contention [that the petitions raise ecclesiastical questions which are exclusively within the jurisdiction of the church, not of civil courts, and therefore that respondents could not maintain their action]," the court said, "we are mindful that 'The traditional American doctrine of freedom of religion and separation of church and state carries with it freedom of the church from having its doctrines or beliefs defined, interpreted, or censored by civil courts.'" 224 Ga., at 68, 159 S. E. 2d, at 695. The court concluded however that the trial court did not violate the doctrine. Citing Georgia Code § 22-408 which provides "Courts are reluctant to interpose in questions affecting management of the temporalities of the church; but when property is devoted to a specific doctrine or purpose, the courts will prevent it from being diverted from the trust," the court held that "a trust [in favor of the general church] is conditioned upon the general church's adherence to its tenets of faith and practice existing when the local church affiliated with it and . . . an abandonment of, or departure

It is of course true that the State has a legitimate interest in resolving property disputes, and that a civil court is a proper forum for that resolution. Special problems arise, however, when these disputes implicate controversies over church doctrine and practice. The approach of this Court in such cases was originally developed in *Watson* v. *Jones*, 13 Wall. 679 (1871), a pre-*Erie* v. *Thompkins* diversity decision decided before the application of the First Amendment to the States but nonetheless informed by First Amendment considerations.[4] There, as here, civil courts were asked to resolve a property dispute between a national Presbyterian organization and local churches of that organization. There, as here, the disputes arose out of a controversy over church doctrine. There, as here, the Court was asked to decree the termination of an implied trust because of departures from doctrine by the national organization. The *Watson* Court refused, pointing out that it was wholly inconsistent with the American concept of the relationship between church and state to permit civil courts to determine ecclesiastical questions. In language which has a clear constitutional ring, the Court said

"In this country the full and free right to entertain any religious belief, to practice any religious

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from, such tenets is a diversion from the trust, which the civil courts will prevent." 224 Ga., at 68, 159 S. E. 2d, at 695.

[4] "*Watson* v. *Jones*, although it contains a reference to the relations of church and state under our system of laws, was decided without depending upon prohibition of state interference with the free exercise of religion. It was decided in 1871, before judicial recognition of the coercive power of the Fourteenth Amendment to protect the limitations of the First Amendment against state action. It long antedated the 1938 decisions of *Erie R. Co.* v. *Tompkins* and *Ruhlin* v. *New York Life Ins. Co.*, 304 U. S. 64 and 202, and, therefore, even though federal jurisdiction in the case depended solely on diversity, the holding was based on general law rather than Kentucky law." *Kedroff* v. *St. Nicholas Cathedral*, 344 U. S. 94, 115–116 (1952).

principle, and to teach any religious doctrine which does not violate the laws of morality and property, and which does not infringe personal rights, is conceded to all. The law knows no heresy, and is committed to the support of no dogma, the establishment of no sect . . . . All who unite themselves to such a body [the general church] do so with an implied consent to [its] government, and are bound to submit to it. But it would be a vain consent, and would lead to the total subversion of such religious bodies, if anyone aggrieved by one of their decisions could appeal to the secular courts and have them [*sic*] reversed. It is of the essence of these religious unions, and of their right to establish tribunals for the decision of questions arising among themselves, that those decisions should be binding in all cases of ecclesiastical cognizance, subject only to such appeals as the organism itself provides for." 13 Wall., at 728–729.[5]

The logic of this language leaves the civil courts *no* role in determining ecclesiastical questions in the process of resolving property disputes.

Later cases, however, also decided on nonconstitutional grounds, recognized that there might be some circumstances in which marginal civil court review of ecclesi-

[5] Accord, see *e. g.*, decisions involving Presbyterian churches, *Trustees of Pencader Presbyterian Church* v. *Gibson*, 26 Del. Ch. 375, 22 A. 2d 782 (1941); *Bramlett* v. *Young*, 229 S. C. 519, 93 S. E. 2d 873 (1956); *St. John's Presbytery* v. *Central Presbyterian Church of St. Petersburg*, 102 So. 2d 714 (Fla. 1958); see also *Northside Bible Church* v. *Goodson*, 387 F. 2d 534 (C. A. 5th Cir. 1967). See generally for an examination of the development and growth of the rules for settling church property disputes, Judicial Intervention in Disputes Over the Use of Church Property, 75 Harv. L. Rev. 1142 (1962); Note, 54 Va. L. Rev. 1451 (1968); Duesenberg, Jurisdiction of Civil Courts Over Religious Issues, 20 Ohio St. L. J. 508 (1959); Judicial Intervention in Church Propert, Disputes—Some Constitutional Considerations, 74 Yale L. J. 1113 (1965).

astical determinations would be appropriate.[6] The scope of this review was delineated in *Gonzalez* v. *Archbishop*, 280 U. S. 1 (1929). There, Gonzalez claimed the right to be appointed to a chaplaincy in the Roman Catholic Church under a will which provided that a member of his family receive that appointment. The Roman Catholic Archbishop of Manila, Philippine Islands, refused to appoint Gonzalez on the ground that he did not satisfy the qualifications established by Canon Law for that office. Gonzalez brought suit in the Court of First Instance of Manila for a judgment directing the Archbishop, among other things, to appoint him chaplain. The trial court entered such an order, but the Supreme Court of the Philippine Islands reversed and "absolve[d] the Archbishop from the complaint." This Court affirmed. Mr. Justice Brandeis, speaking for the Court, defined the civil court role in the following words: "In the absence of fraud, collusion, or arbitrariness, the decisions of the proper church tribunals on matters purely ecclesiastical, although affecting civil rights, are accepted in litigation before the secular courts as conclusive, because the parties in interest made them so by contract or otherwise." 280 U. S., at 16.

In *Kedroff* v. *St. Nicholas Cathedral*, 344 U. S. 94 (1952), the Court converted the principle of *Watson* as qualified by *Gonzalez* into a constitutional rule. *Kedroff* grew out of a dispute between the Moscow-based general Russian Orthodox Church and the Russian Orthodox churches located in North America over an appointment to St. Nicholas Cathedral in New York City. The North American churches declared their independence from the general church, and the New York legislature enacted a statute recognizing their administrative autonomy. The New York courts sustained the constitutionality

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[6] See *e. g.*, *Boulding* v. *Alexander*, 15 Wall. 131 (1872); *Brundage* v. *Deardoff*, 55 F. 839 (C. C. N. D. Ohio 1893).

of the statute and held that the North American church's appointed hierach had the right to use the cathedral. This Court reversed, finding that the Moscow church had not acknowledged the schism, and holding the statute unconstitutional. The Court said, 344 U. S., at 116:

> "The opinion [in *Watson* v. *Jones*] radiates . . . a spirit of freedom for religious organizations, an independence from secular control or manipulations—in short, power to decide for themselves, free from state interference, matters of church government as well as those of faith and doctrine. *Freedom to select the clergy, where no improper methods of choice are proven, we think, must now be said to have federal constitutional protection as part of the free exercise of religion against state interference.*" (Italics supplied.)

And, speaking of the New York statute, the Court said further, *id.*, at 119:

> "By fiat it displaces one church administrator with another. It passes the control of matters strictly ecclesiastical from one church authority to another. *It thus intrudes for the benefit of one segment of a church the power of the state into the forbidden area of religious freedom contrary to the principles of the First Amendment.*" (Italics supplied.)

This holding invalidating legislative action was extended to judicial action in *Kreshik* v. *St. Nicholas Cathedral*, 363 U. S. 190 (1960), where the Court held that the constitutional guarantees of religious liberty required the reversal of a judgment of the New York courts which transferred control of St. Nicholas Cathedral from the central governing authority of the Russian Orthodox Church to the independent Russian Church of America.

Thus, the First Amendment severely circumscribes the role that civil courts may play in resolving church prop-

erty disputes. It is obvious, however, that not every civil court decision as to property claimed by a religious organization jeopardizes values protected by the First Amendment. Civil courts do not inhibit free exercise of religion merely by opening their doors to disputes involving church property. And there are neutral principles of law, developed for use in all property disputes, which can be applied without "establishing" churches to which property is awarded. But First Amendment values are plainly jeopardized when church property litigation is made to turn on the resolution by civil courts of controversies over religious doctrine and practice. If civil courts undertake to resolve such controversies in order to adjudicate the property dispute, the hazards are ever present of inhibiting the free development of religious doctrine and of implicating secular interests in matters of purely ecclesiastical concern. Because of these hazards, the First Amendment enjoins the employment of organs of government for essentially religious purposes, *Abington* v. *Schempp*, 374 U. S. 203 (1963); the Amendment therefore commands civil courts to decide church property disputes without resolving underlying controversies over religious doctrine. Hence, States, religious organizations and individuals must structure relationships involving church property so as not to require the civil courts to resolve ecclesiastical questions.

The Georgia courts have violated the command of the First Amendment. The departure-from-doctrine element of the implied trust theory which they applied requires the civil judiciary to determine whether actions of the general church constitute such a "substantial departure" from the tenets of faith and practice existing at the time of the local churches' affiliation that the trust in favor of the general church must be declared to have terminated. This determination has two parts. The civil court must first decide whether the challenged

actions of the general church depart substantially from prior doctrine. In reaching such a decision, the court must of necessity make its own interpretation of the meaning of church doctrines. If the court should decide that a substantial departure has occurred, it must then go on to determine whether the issue on which the general church has departed holds a place of such importance in the traditional theology as to require that the trust be terminated. A civil court can make this determination only after assessing the relative significance to the religion of the tenets from which departure was found. Thus, the departure-from-doctrine element of the Georgia implied trust theory requires the civil court to determine matters at the very core of a religion—the interpretation of particular church doctrines and the importance of those doctrines to the religion. Plainly, the First Amendment forbids civil courts from playing such a role.

Since the Georgia courts on remand may undertake to determine whether petitioner is entitled to relief on its cross-claims, we find it appropriate to remark that the departure-from-doctrine element of Georgia's implied trust theory can play *no* role in any future judicial proceedings. The departure-from-doctrine approach is not susceptible of the marginal judicial involvement contemplated in *Gonzalez*.[1] In *Gonzalez*, Gonzalez' rights under a will turned on a church decision, the Archbishop's, as to church law, the qualifications for the chaplaincy. It was the archbishopric, not the civil courts, which had the task of analysing and interpreting church law in order to determine the validity of Gonzalez' claim to a chaplaincy. Thus, the civil courts could adjudicate the rights under the will without interpreting or weighing church doctrine.

[1] We have no occasion in this case to define or discuss the precise limits of review for "fraud, collusion or arbitrariness" within the meaning of *Gonzalez*.

but simply by engaging in the narrowest kind of review of a specific church decision—*i. e.*, whether that decision resulted from fraud, collusion, or arbitrariness. Such review does not inject the civil courts into substantive ecclesiastical matters. In contrast, under Georgia's departure-from-doctrine approach, it is not possible for the civil courts to play so limited a role. Under this approach, property rights do not turn on a church decision as to church doctrine. The standard of departure-from-doctrine, though it calls for resolution of ecclesiastical questions, is a creation of state not church law. Nothing in the record suggests that this state standard has been interpreted and applied in a decision of the general church. Any decisions which have been made by the general church about the local churches' withdrawal have at most a tangential relationship to the state-fashioned departure-from-doctrine standard. A determination whether such decisions are fraudulent, collusive, or arbitrary would therefore not answer the questions posed by the state standard. To reach those questions would require the civil courts to engage in the forbidden process of interpreting and weighing church doctrine. Even if the general church had attempted to apply the state standard, the civil courts could not review and enforce the church decision without violating the Constitution. The First Amendment prohibits a State from employing religious organizations as an arm of the civil judiciary to perform the function of interpreting and applying state standards. See *Abington* v. *Schempp*, *supra*. Thus, a civil court may no more review a church decision applying a state departure-from-doctrine standard than it may apply that standard itself.

The judgment of the Supreme Court of Georgia is reversed, and the case is remanded for further proceedings not inconsistent with this opinion.

It is so ordered.

SUPREME COURT OF THE UNITED STATES

No. 71.—October Term, 1968.

Presbyterian Church in the United States et al., Petitioners, *v.* Mary Elizabeth Blue Hull Memorial Presbyterian Church et al.	On Writ of Certiorari to the Supreme Court of Georgia.

[January 27, 1969.]

Mr. Justice Harlan, concurring.

I am in entire agreement with the Court's rejection of the "departure from doctrine" approach taken by the Georgia courts, as that approach necessarily requires the civilian courts to weigh the significance and the meaning of disputed religious doctrine. I do not, however, read the Court's opinion to go further to hold that the Fourteenth Amendment forbids civilian courts from enforcing a deed or will which expressly and clearly lays down conditions limiting a religious organization's use of the property which is granted. If, for example, the donor expressly gives his church some money on the condition that the church never ordain a woman as a minister or elder, see *ante*, at 2, n. 1, or never amend certain specified articles of the Confession of Faith, he is entitled to his money back if the condition is not fulfilled. In such a case, the church should not be permitted to keep the property simply because church authorities have determined that the doctrinal innovation is justified by the faith's basic principles. Cf. *Watson* v. *Jones*, 13 Wall. 679, 722–724 (1871).

On this understanding, I join the Court's opinion.